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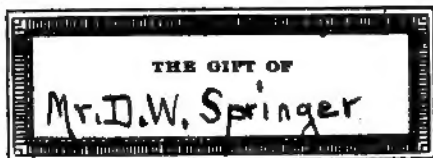
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MANUAL OF FARM LAW.

UNIVERSITY OF IOWA, IOWA CITY.

MAIN BUILDING, UNIVERSITY OF MICHIGAN, ANN ARBOR.

MANUAL OF LAW AND FORMS.
A PRACTICAL
HAND-BOOK OF THE LAW

—AND—

BUSINESS FORMS,

FOR THE USE OF INDUSTRIAL CLASSES,

—BY—

HENRY A. HAIGH,

COUNSELOR AT LAW.



DETROIT, MICHIGAN:
DARLING BROTHERS & CO., Publishers.

1887.

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Mr. D. W. Spurgeon
10-8-1935

PREFACE.

For several years the writer conducted in *The Michigan Farmer*, and subsequently in *The American Agriculturist*, a department in which the LAW OF THE FARM was set forth in a series of short articles, and answers were given to inquiries by subscribers upon legal questions arising in the experiences of farm life. During that time the suggestion was frequently made to him that if the articles and the questions with their answers could be embodied in connected form they would make a book of practical use to farmers and the industrial classes generally. The present volume is in part the result of that suggestion; and while it is sought to give special prominence to those subjects which are of most common importance among farmers and artisans, still effort has not been spared to make the work useful to the general reader.

The book is not intended to obviate the necessity for the assistance of a lawyer. Such a claim for it would be neither reasonable nor candid. But it is hoped that its suggestions may be found useful in preventing mistakes of ignorance or carelessness, and thus help to keep its readers out of some of the entanglements of the law.

And if it shall serve to throw some light upon that subject of paramount importance, namely—the laws of the land—among classes so numerous that they constitute the great mass of the population, the author will feel that he has not labored in vain.

HENRY A. HAIGH.

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CHAPTER I.

PRELIMINARY CONSIDERATIONS.

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| 3. The Federal Constitution. | 8. A General Principle. |
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1. Definition of Law. By the term *law* in this book is meant municipal or civil law, or "the law of the land," as distinguished from natural law, or the law of God. It is said to be "the rules by which society compels or restrains the action of its members;" or, "the rules of civil conduct prescribed by the supreme power in a State;" or, "the aggregate of those rules and principles of conduct which the governing power in a community recognizes as the rules and principles which it will enforce and sanction, and according to which it will regulate, limit and protect the conduct of its members." These definitions have been given by law writers. No one of them is perfect. It would be almost impossible to lay down in concise terms a faultless definition of law. Its complexity renders conciseness of definition difficult; yet the idea is not a difficult one to grasp. It may be written and formal, as constitutions, statutes, etc., or it may be unwritten, as the common law of England and those long established customs which have acquired with us the force of positive law. Nor does it consist any more of those solemn expressions of legislative will called "statutes," than it does of the *constructions* placed upon those statutes by the courts.

A little reflection, however, will enable the reader to see that, viewed as a whole, the law is as near as we can perhaps express it simply the properly constituted regulations of a country for the



control of its people, and the protection of their property and their rights.

✓ **2. Sources of Law.** There are five sources to which we must look for the laws which obtain in each of the American States. These are: The United States Constitution, the Acts of Congress, the State Constitution, the Acts of the State Legislature, and the Common Law. It will be well to consider each briefly.

✓ **3. The Federal Constitution.** This is the supreme law of the United States, the highest law of the land. It is a document, consisting of seven articles, which was framed by a convention of the representatives of the people which met in Philadelphia in 1787, and adopted the constitution on the 17th of September in that year. It went into force on the first Wednesday in March, 1789. It vests certain powers in the Federal Government, limits to a certain extent the powers of the various States, and declares certain rights and privileges to the people. Being the fundamental law of the land, all other laws must conform to it, otherwise they are unconstitutional and void. It cannot be changed or amended except by consent of two-thirds of all the States. Fifteen amendments have thus been made to it at various times since its adoption.

✓ **4. Acts of Congress.** The Federal Constitution gives Congress power to legislate on certain subjects. The control of most things which are of national importance—like the declaring of war, raising of armies, coining of money, establishing post-offices, granting patents to inventors, regulating commerce, etc., is given to Congress. Concerning these subjects thus placed under its care, and only these, it can enact such laws as seem to it wise. Its enactments must conform to the United States Constitution; but it is not necessary that they be in harmony with State laws, for they are superior to those. Congress consists of the Senate and House of Representatives. There are 76 Senators, and 325 Representatives.

✓ **5. State Constitutions.** These are to the respective States what the Federal Constitution is to the United States, with this difference: The general government is one of delegated powers. It can do only what it is given authority to by the Federal Constitution. The State governments have more nearly unlimited powers. They can do everything which is not prohibited by their constitutions or by the Federal Constitution. The States

possess all the sovereign power, that is all the power by which the people are governed, except what they have given to the general government in the Federal Constitution. The people adopted the Federal Constitution for the purpose of creating and of giving certain powers to the general government. The State constitutions are adopted by the people of the various States for the purpose not only of establishing their own State governments, but of placing certain checks and limits upon the power of their own legislatures.

The Constitutions of the several States are not uniform, but are quite similar. They usually set forth the general frame-work of the State government, give the general qualification of the right of suffrage, divide and define the powers of government and the duties of State officials, and contain usually a bold declaration of rights for the protection of individuals and minorities. There are 38 States and hence 38 State Constitutions in force in this country. A State Constitution can only be amended by the properly expressed will of the people of the State.

✓ **6. State Statutes.** These are the formal and solemn enactments of the different State Legislatures. They bear upon a very great number of subjects. They must conform to the Federal and State Constitutions, but need not necessarily be in harmony with every Federal Statute. Where they are not, they are so far simply superseded. For example: The Federal bankruptcy law, recently repealed, made uniform regulation on the subject of bankruptcy throughout the land. The various States at the same time had laws for the benefit of insolvent debtors, etc., designed for the same purpose as the bankrupt law. The State Statutes were not rendered void by the Federal law, but were simply placed in abeyance. The repeal of that law has left them again in full force. Any subject or matter not touched upon by the laws so far enumerated, is regulated by what is called the common law.

7. The Common Law. This is the great mass of unwritten laws, the "*leges non scriptæ*," as they are called, or the general customs of the people which have been so long honored and observed as to have acquired the force of positive law. "The common law consists of all those principles, usages, and rules of action, applied to the government and security of persons and property, which do not rest for their authority upon any express ✓

and positive declaration of the will of the Legislature." (1.) It is based for the most part upon the common law of England, which was transplanted to this country by the early colonists.

"The common law of England consisted of those maxims of freedom, order, enterprise, and thrift, which had prevailed in the conduct of public affairs, the management of private business, the regulation of the domestic institutions, and the acquisition, control, and transfer of property from time immemorial. It was the outgrowth of the habits of thought and action of the people, and was modified gradually and insensibly from time to time as those habits became modified, and as civilization advanced, and new inventions introduced new wants and conveniences, and new modes of business. Springing from the very nature of the people themselves, and developed in their own experience, it was obviously the body of laws best adapted to their needs, and as they took with them their nature, so also they would take with them these laws whenever they should transfer their domicile from one country to another." (2.)

The common law of Louisiana is derived partially from that of Spain, and is modified somewhat by that of France, that State having been at one time a Spanish, and at another, a French colony.

8. A General Principle. Having thus briefly taken a general view of the subject and sources of the law, let us see if we cannot discover some general principle running through it which may aid us in our investigations. It is not meant by this to refer to any general law of morals, or principle of right or wrong, for the study of ethics is no part of our present purpose. What is needed is something, not of theoretical, but of practical application.

It must be confessed that jurisprudence is not an exact science and that there is no one fundamental principle that will explain all its provisions; but the principle of the contract will be found to be of wonderfully wide application, and to underlie and determine very many of our rights and obligations in our dealings with each other.

9. A Contract is an agreement between two or more persons; — "an agreement in which a party undertakes to do or not to do

(1.) 1 Kent's Commentaries, 492.

(2.) Cooley's Constitutional Limitations, page 21.

a particular thing;" (1.)—"an agreement upon sufficient consideration to do or not to do a particular thing." (2.)

The foundation rule in regard to contracts is that *every man must fulfill every agreement he makes*; every person must keep his promises. There are a few exceptions to this, but still it is the general rule; and so important is it that the United States Constitution forbids the States from passing any law which will relieve any one from the obligation of performing the contracts he has made. (3.) It is not needful here to prove the justice of this rule. That is obvious. Our civilization is built upon it. If men were not obliged to live up to their agreements we could not carry on business, for nearly every business act is the fulfillment of some agreement. No one would be willing to sell goods, for there would be no way of collecting pay for them; no one would be willing to do work, for he would have no valid claim for his wages.

10. Requisites of a Contract. Being of so much importance it will be well to here consider this matter of contracts. There are seven requisites generally necessary to the validity of a contract. These are:

(1.) *Possibility.* The thing to be done must be possible. Few people are foolish enough to depend on an impossible agreement; if they are they must generally bear the consequences of their folly. But it is not every sort of impossible contract that its maker is relieved from performing; for if the thing agreed to be done is not *in its nature* impossible, but is only impossible to him who agrees to do it, then the party so agreeing must pay for his foolishness in attempting what he could not do. For example: If A agrees to take B across the ocean in a day, B will have no remedy if he fails to do it; but if A agrees to furnish B 1,000 bushels of wheat at a certain time, and he finds it impossible to get the wheat, he must answer in damages for his failure. It is the duty of every one making a contract to foresee and provide against every circumstance which might render it impossible, and the other party has the right to rely upon his doing so. Sickness does not generally excuse one, nor lack of money ever. Even death does not always annul a contract, for unless it involves some personal skill, the executor must carry it out.

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- (1.) Chief Justice Marshall in 4 Wheat., 197.
 - (2.) 2 Blackstone's Commentaries, 446.
 - (3.) U. S. Constitution, Art. I, Sec. 10.

(2.) *Legality.* A contract the law forbids is void. The law will not compel a man to do that which it prohibits him from doing. The thing agreed to be done must be legal and also the consideration or thing paid for it must be legal. There are not many contracts of this class. Bets, bribery, and gambling agreements, contracts to smuggle goods, etc.,—in fact any contract which has for its purpose the carrying out of any object contrary to justice or common morality—these are void because they are regarded in law as hurtful to the public; they are *against public policy* as it is termed. The law will not therefore enforce them, even though one party has performed his part or paid money. *Usury* is in most States illegal,—people are prevented from agreeing to pay or take more than a certain rate of interest. This matter is referred to further on. A *contract in restraint of trade*, like agreeing to give up one's trade, profession or business, is regarded as against public policy and is void. This applies only to a general surrender, an agreement to give up trade entirely. A contract not to carry on a trade in a certain locality is valid. It has been held in several cases that a contract to give up trade in a certain State of the United States is good. *

Contracts made on Sunday are generally invalid.

Contracts between citizens of one country and citizens of another are as valid and binding as any, unless the two countries come to war. War puts a stop to all commercial relations and renders all such contracts void.

If part of a contract is illegal and part not, and it is capable of being divided, and the consideration can also be separated into corresponding parts, then the part which is legal is valid and can be enforced. This seldom occurs.

(3.) *Proper Parties.* There must be competent parties to every valid contract. A contract with a minor, or idiot, or drunken person, is not binding upon him. The minor can enforce his contract but it cannot be enforced against him, unless he ratifies it on coming of age. Neglecting to then disaffirm it, or continuing to receive benefits from it, would generally amount to ratification. Contracts for *necessaries*, however, made by any of the above are binding upon them. These are for food, raiment, shelter, education, etc. A contract by an infant, for instance, for such necessaries as are needful for him, taking into account his

* See *Chase vs. Beal*, 24 Mich., 492.

station in life, etc., is binding upon him, and may be collected out of his estate.

✓ (4.) *Mutual Assent.* A proposition not assented to by both parties is not binding on either. Assent is implied by the word agreement. It is absolutely essential to the validity of a contract. Assent may be manifested in various ways. Anything which indicates it with certainty is sufficient. An offer may be withdrawn any time before it is accepted. If it is accepted by letter the contract is regarded as complete the moment the letter is put into the office, if properly directed.

✓ (5.) *Valid Consideration.* A promise which does not rest upon some substantial consideration cannot be enforced. Something must be given, or done, or promised, in order to make the agreement binding. The value of the consideration is not generally important. The law will not protect a man against a poor bargain, but it will not compel him to do that for which he has received absolutely nothing. A debt of *honor*, therefore, cannot be enforced. The law does not attempt to make men faithful or even just; it only attempts to prevent injury, and a man is not regarded as injured by the breaking of a promise for which he has paid nothing. A consideration may consist of money paid, or anything else given, or work done, or anything promised. In a marriage contract the woman's promise of marriage is the consideration for the man's, and *vice versa*.

Considerations are said to be *valuable* when they have a money value, as labor, or lands, or chattels. They are *good* when they consist of something which does not possess a money value, as love, affection, or filial duty. These latter are sufficient to support a promise in some cases.

In deeds, and promissory notes, drafts, and bills of exchange, the consideration is *presumed*, that is, it is regarded as existing whether it does or not. The first of these being solemn written instruments, it is presumed that they would not be undertaken except upon consideration; the latter three being used and intended for circulating medium, to pass from hand to hand, would be deprived of much of their value for that purpose did the law allow the consideration for which they are given to be inquired into. So the consideration is in these cases presumed or implied.

(6.) *Fraud and Deceit.* A contract obtained by fraud is void as against the party using the fraud, but may be enforced by the innocent party if he sees fit. Fraud may consist in stating falsehoods or suppressing important facts. *Mistake* also sometimes has the same effect. (Too technical to be gone into further here.)

(7.) *Written Contracts.* Certain contracts must be in writing in order to be binding. What is known as the *Statute of frauds*, an English law enacted in the 29th year of the reign of Charles the Second, the provisions of which have been enacted in most of the States of the American Union, requires that certain contracts must be written and signed. These include contracts relating to the sale of real estate, leases for more than a year, promises of executors and administrators to pay the debts of the estates for which they act out of their own funds, all promises to answer for the debts or defaults of another, all agreements not to be performed within a year from the time of their making, and contracts for the sale of goods amounting to over \$50. All these must be in writing and signed by the party to be charged; otherwise they cannot be enforced. In case of the sale of goods, the payment of earnest money or the acceptance of part of the goods does away with the necessity for a written contract.

If the reader will keep in mind these elementary requisites in entering his various contract relations he may avoid trouble; and it is in the avoidance of trouble that his legal knowledge will benefit him more than in remedying that which has come about.

CHAPTER II.

REAL ESTATE.

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| 1. Property in General. | 8. Estates for Life. |
| 2. Land. | 9. Emblements. |
| 3. Real Estate Law. | 10. Estates for Years. |
| 4. Title to Real Estate. | 11. Estates at Will. |
| 5. Ownership of Real Estate. | 12. Estate in Dower. |
| 6. Fee-Simple or Full Ownership. | 13. Estate by Curtesy. |
| 7. Estate Tail. | |

1. Property in General. Property consists of lands and chattels, or of Real Estate and Personal Property. The term property is broad, and may be said to include everything which is the subject of ownership. It is commonly divided into the two kinds above mentioned, and these are governed by quite distinct systems of jurisprudence. Real property, or, as it is usually called, real estate, includes *lands, tenements, and hereditaments*. These terms constantly recur in real estate law, and it should be borne in mind that land means any portion of the earth's surface, tenements means this and also anything else which may be leased or held by the same title that land is, and hereditaments includes both the above and everything else which may be inherited. All of these are, by statute, in some States included in the term land.

Real estate may also be *corporeal*, as land and those tangible and substantial things attached to it and regarded as a part of it,—such as trees, buildings, and the like; or it may be *incorporeal*, as certain rights and profits arising out of or annexed to land. The former is always included in the familiar term land.

2. Land. This then is any soil, ground, or earth, as fields, meadows, pastures, woods, waters, marshes, furzes, heaths, etc., which constitute the surface of the earth. It extends upwards indefinitely, and downwards to the centre of the earth. It therefore includes all things growing upon or affixed to it,—as

trees, crops, fences, and houses, and everything else which has become so attached to it as to be what are called *fixtures*; (See chapter on Fixtures,) and also everything contained beneath the surface, as coal, ores, stone, and mines of iron, and other metals including silver and gold. (1.)

It will be seen that land thus includes things which in themselves are of a chattel nature. For example, trees growing or coal in the mine are real property, but when the trees are cut down or the coal is mined they become personal property or chattels. A fence post just purchased is a chattel, but when it is set in the ground it is regarded as part of the land. Some articles are considered as real property though they are never physically attached to the land, but are only constructively or theoretically annexed to it,—as the keys of a house, the deeds and other evidences of ownership, and some other similar articles called *heir looms*.

3. Real Estate Law. The law regulating this very important subject of real estate, has been of long and gradual growth. It was the first to receive the attention of the law-making power, and has always been the subject of the profoundest study of students of jurisprudence. Many of its incidents and provisions originated in the old feudal system of tenures, which was the system of holding real property that prevailed in England and in the countries of Western Europe during the middle ages. That system arose from the peculiar political condition of those countries, by which it came about that real property was held by *tenure*, which was something like a lease, from the great lords and barons, who in turn held the land similarly from the King; and the King theoretically if not practically held the absolute and ultimate ownership of the land. The feudal system has long since become extinct, but many of the terms and expressions so often recurring in real estate law there took origin; and it is to that system that we must look for the explanation of many things which otherwise seem very senseless and difficult. Reference will

(1.) At the common law mines of silver and gold did not belong to the owner of the surface. These were reserved by the Crown, the King being obliged to defend the realm, and to coin and furnish money necessary for that purpose and for the uses of trade and commerce, asserted the right to all mines of precious metals as an indispensable necessity. 1 Blackstone's Comm., 294. A similar right has been claimed by some of the States. In New York such mines are, by statute, reserved to the people of the State. N. Y. Revised Statutes, 6 Ed., Vol. 1. 735.

therefore occasionally be made in the following pages to this old feudal system.

Question is sometimes made as to why in our forms of deeds and other legal documents, old fashioned phraseology and odd terms which possess no popular meaning are still retained. The answer is that these expressions and words have, by their long use for their particular purposes, acquired a settled and definite meaning, the Courts have in most instances cleared up all obscurity surrounding them, and they are therefore safer and hence better than more modern expressions which might be more easily understood by the masses. The law is properly conservative, and innovations even in forms of expression are not favored.

The real estate law of this country is contained very largely in the Statutes of the different States, which have gone into more of detail in this than in most other subjects. Among these statutes there is a general similarity, at least in the main features, and these main features will be in the following pages pointed out and exceptions to them, when such occur, referred to.

4. Title to Real Estate. It is a principle of our law, founded upon the old feudal maxims, that the Government—which with us takes the place of the Crown—is the true and only source of title to real estate. All valid individual claims, therefore, to land in the United States must be derived from the grant of our Federal or State governments, except certain grants from the Crown, or contained in Royal Charters, which became vested before the time of the American Revolution. A title to land from any other source would not be valid.

The ordinary meaning of the word title is the one that is given to it in law. It is the *means* by which the owner has the possession of his land, the thing that gives him the right to his interest there; and the expressions which we often hear, “*good title*,” “*doubtful title*,” “*clouded title*,” “*bad title*,” etc., popularly express the legal significance which is attached to them.

Title to land may be obtained in two ways, namely, by *Descent*, and by *Purchase*. By descent is meant where an heir takes property on the death of his ancestor, or wherever land is acquired by *inheritance*. By purchase is meant every other method by which title to land may be acquired. It will be seen thus that the word “purchase” has in law a very much broader meaning than the one ordinarily given it. It includes not only buying land but

acquiring it by gift, grant, prescription and every other way except inheritance.

5. Ownership of Real Estate. There is much variety in the kinds of interest or ownership which a person may possess in land. It may be full, absolute, and complete, or it may be partial or conditional. It may be for all time, or to end when a certain event happens. It may be for the lifetime of the owner, or some one else. It may not commence until a future time, it may be for a definite period or merely during the pleasure of some person. This idea of ownership, or the right which man has in real property, is expressed in law by the word *estate*. That word has, also, even in the law, a broader meaning than that, signifying anything of which property may consist, as real estate and personal estate; but its proper and technical meaning when used as it generally is in connection with a qualifying word is the degree, quantity, nature, and extent of interest which one has in real property. These different kinds of interests or ownership above referred to are indicated and distinguished as different kinds of estates,—as for example: Estate in Fee-Simple, Estate in Fee-tail, Estate in Dower, Estate by the Curtesy, Estate in Joint Tenancy, Estate in Common, Estate in Expectancy, Estate in Possession, Estate in Remainder, Estate for Life, Estate for Years, Estate at Will, etc., etc.

The incidents, conditions, and characteristics of these different estates, or at least of such of them as obtain to any extent in America, will be here considered. Not all are of equal importance. Some have been done away with by statute, as estate in tail, and some as estates at will have been by statute or decisions of Courts modified or turned into other estates. The first, because most important, is:

6. Fee-Simple or Full Ownership. In the United States almost all the land is held by this the fullest and most complete title or ownership. It is the largest possible estate which a man may have in land. It is where lands are given to a man and his heirs, absolutely without any end or limitation put to the estate. (1.) The word *fee* is of feudal origin, signifying a feud or land holden of a superior lord, in distinction from *allodial* lands, or those not so held. This title gives to the owner the fullest power

(1.) 2 Bl. Com., 106.

of doing with or disposing of his estate in any way he may see fit—even to destroying it if he chooses, as for instance, in tearing down a house; and on failing to dispose of it, it descends, upon his death, to such of his kindred, no matter how remote, as the law marks out as his heirs. (1.)

It was formerly always necessary that the word "*heirs*" should occur in the grant or deed in order to create this estate. If land were granted not to John Smith *and his heirs*, but only to John Smith, no fee-simple would be created, but only an estate for life. The same would be true if the deed said John Smith "*and his heir*," or John Smith "*or his heirs*," or "*his assigns forever*," or "*his successors*," or "*his offspring*," in all of these cases it has been held that only a life estate was created. (2.) A deed to "J. M. and his generation to endure so long as the waters of the Delaware run" was held to convey a life estate only. (3.) But in Vermont a lease for 1,000 years or so long as wood grows and water runs, was held to be a fee. (4.)

The use of this word "*heirs*" is still necessary to create a fee-simple, except in those States where this rather arbitrary rule has been abolished by statute. It has been so abolished in New York, Michigan, and elsewhere, (5.) and in quite a number of the States there are statutes designed to remedy defects and mistakes in conveyances, but it is doubtful whether such statutes do more good than harm. (6.) The wisdom of disturbing a well defined rule of conveyancing is very questionable.

In wills it is not necessary to use the word "*heirs*" in order to create and give an estate in fee-simple. If the intention of the testator, or person making the will, is clearly expressed otherwise, it will be sufficient. (7.) But to prevent any question of this there are statutes in England, and in many of the States, whereby a devise or will of lands carries whatever estate the deviser or testator had in them, unless the same is restricted by the language of the will. (8.)

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- (1.) 1 Washburn, Real Prop., 66. 9 Allen, 525.
 - (2.) See cases cited in 1 Washburn Real Prop., 71.
 - (3.) Foster vs. Joice, 3 Wash. C. C., 498.
 - (4.) Arms vs. Burt, 1 Vermont, 303.
 - (5.) Laws of Mich., 1881, page 227.
 - (6.) The word "*heirs*" not necessary to create a fee in the following States : Alabama, Arkansas, Georgia, Illinois, Iowa, Kentucky, Mississippi, Missouri, New York, Tennessee, Texas, Virginia, Maryland, and Michigan.
 - (7.) Jarman on Wills, page 229.
 - (8.) There are such Statutes in all the States mentioned in note (6) except Michigan.

11. 7. **Estate Tail.** This is an estate of inheritance, like a *fee-simple*, except that instead of descending to the heirs generally, it goes only to the heirs of the grantee's body; that is, to his children and through them to his grandchildren, and so on as long as the line continues. It is an estate given to a man *and the heirs of his body*. He cannot, therefore, cut off their inheritance, nor sell or mortgage anything more than his interest in the land, which really only amounts to a life estate. This form of estate was much favored in early days in England among the great landed families; but it was early found to be objectionable for many reasons. Children were largely independent of their parents, and they grew disobedient. Creditors could not enforce payment out of the lands of their debtors. Estates-tail are now practically abolished in England, and they are entirely so in this country. In most of the States they are by express constitutional or statutory provision turned into fees-simple. In others there are simple legal methods of accomplishing this. The genius of our people has always been strongly against primogeniture and entailment, and neither now exist here.

8. **Estates for Life.** These include all estates in land which last during the life of the owner or some other person, but which then terminate and do not descend to heirs. An estate tail becomes an estate for life when the possibility of issue is extinct. Such estates are common in America; many arise by operation of law as estates *in Dower*, and *by the Curtesy*, and others arise by the act of the parties, as where lands are given to one to use during his life. Property is often left this way by will, as where a man leaves his lands to his wife to use during her life, and then to go to his children, etc.

The important thing to remember about life estates is that the owner is entitled to what are called *estovers* and *emblems*, and that he must not commit *waste*.

✓ The term *estovers* is the legal expression for timber or wood necessary for use, as fuel and for repairing the house, barns, and fences of the farm. The tenant for life or owner of a life estate in lands is entitled to a reasonable quantity of this—if the land is capable of supplying it—for the use of himself and his family upon the premises. It has been held, also, to include a reasonable supply for the use of necessary servants employed upon the farm,

living in the same or in another house upon the premises. (1.) Only so much timber as is necessary for present use upon the farm can be taken, and it must be cut in a proper and careful manner, and only that can be taken which is fit for the purpose intended. (2.) Wood cannot be cut and sold, even though the money is used for the purchase of fuel which would otherwise come from the farm (3), nor can clay be dug for the purpose of making bricks for sale. (4.)

An owner of a life estate may sell or lease his interest, and all his rights in the land will pass to his grantee or tenant. (5.)

9. Emblements are the profits of the land which are the result of the tenant's industry. The term in a strict sense is applied to the right which a tenant has to take away certain crops after his tenancy or estate is terminated. It is a privilege which the law gives to those whose estates may be suddenly terminated for the purpose of encouraging husbandry. The crops are only such as are the growth of annual planting, as corn, wheat, peas, beans, potatoes, and the like. These the owner of a life estate which has been suddenly terminated, by his own death or by the death of some one else, may, or his representative may, take away when they are ripened; and may enter upon the land for the purpose of continuing their cultivation until the harvest time.

The owner of a life estate or of an estate for years must not commit *waste*. That is, he must not do or suffer to be done upon the premises anything which essentially injures the interests of whoever owns the inheritance or future estate. He must use the land as a prudent farmer would use it, keep the buildings in fair repair, and take away only the annual crops.

For a full consideration of this subject of *waste* and incidentally of estovers and emblements, see Chapter XV.

10. Estates for Years. These are interests in lands usually arising out of contracts called leases for the possession of land during a definite number of years. They are somewhat similar in character to estates for life, except where they expire at a definite

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- (1.) Smith vs. Jewett, 40 N. H., 532.
 - (2.) Simonson vs. Norton, 7 Bing., 640.
 - (3.) Phillips vs. Allen, 7 Allen, 117.
 - (4.) Livingston vs. Reynolds, 2 Hill, 157.
 - (5.) Cook vs. Cook, 11 Gray, 123.

and known time the right to emblements does not attach. See Landlord and Tenant, Chapter XXXI.

11. Estates at Will. These are interests in land which last during the will or pleasure of the parties in interest. They are created sometimes by lease; sometimes by operation of law, as where the tenant holds over after the time specified in his lease has expired. Either party can terminate the estate, whether it is so specified in the lease or not. A tenant at will is entitled to estovers, and when the estate is terminated by the landlord, to emblements. (1.) The death of either party or any act done denoting a clear intention to determine the estate will generally end it.

12. Estate in Dower. Dower is the provision which the law makes for a widow out of the property of her husband, for her support and the nurture of her children. It is a life estate which the wife takes by law out of the husband's lands and tenements immediately upon his death. In Michigan the widow's dower consists of one-third of the husband's property, both real and personal. She is entitled to this in any event. If he wills her something in lieu of dower she need not so accept it unless she sees fit.

13. Estate by Curtesy. This is a life estate which the husband takes upon the death of the wife in the lands of which the wife was possessed during their coverture, providing they have had issue. Four things are essential to create this estate, viz.: Marriage, possession of real estate by the wife, birth of a child alive during the life of the wife, and the death of the wife. Curtesy has grown into practical disuse in England, and has been abolished or modified in many of the States.

(1.) *Sherborn vs. Jones*, 20 Me., 70.

CHAPTER III.

THE ACQUIREMENT OF REAL ESTATE.

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| 1. Two Ways of Obtaining Title to Land. | 9. Pre-emption. |
| 2. Title by Possession. | 10. The Homestead Act. |
| 3. By Accretion. | 11. Soldiers' Homesteads. |
| 4. Prescription. | 12. The Timber Culture Act. |
| 5. Estoppel. | 13. Mining Claims. |
| 6. Public Grant. | 14. Fees of Land Offices. |
| 7. A Farm from Uncle Sam. | 15. Title by Office Grant. |
| 8. Purchase from the Government. | 16. Title by Private Grant. |

Having in the preceding chapter considered somewhat the nature and incidents of real property, it will now be well to examine briefly some of the different methods by which such property can be acquired. This is a matter of importance, specially to those contemplating an agricultural pursuit since they must possess themselves of land before they can follow their profession.

1. The Two Ways of Obtaining Land. There are two ways of acquiring the title to land, namely, by *Descent*,—as where a man upon the death of his ancestor inherits his property as heir at law,—and by *Purchase*, which in a broad meaning given to that term by law writers, includes every other legal method except descent. The first is of use only to those fortunate individuals who happen to be the heirs of landed ancestors not likely to make wills. See Chapter on Descent of Real Property.

The second includes not only what is commonly meant by the term purchase, namely, buying land, but a dozen or more other ways, only a few of which it is necessary now in America to consider. Among these are possession and limitation, accretion, prescription, and estoppel.

2. Title by Possession. The mere naked possession of land will under certain circumstances give absolute title to it in fee-simple. That is to say, the man who is in possession of land—who is living on it or exercising control over it—is regarded by the law as the owner of it, to the extent at least that no one can dispossess him without showing a title of a higher and better character. This must be done within a certain time, for in all of the States there is what is called a *statute of limitations*, which for the peace and quiet of community does not allow an action to be brought or the title to land to be disturbed after the lapse of a certain number of years. If, therefore, one claiming title does not properly assert it within the time limited, he loses the right to do so, and thus the mere possession may develop into perfect title. “Squatters” sometimes get title to land in this way, and their title when thus perfected is as good as any. But it must be remembered that in order to get title by possession merely, certain conditions must be complied with. The possession must be actual, open, notorious, and under a claim of right. It must have been continuous during the whole of the period prescribed by the statute of limitations, and it must not have been under license or a lease for that would obviously defeat the title. The period fixed by the statute of limitations is not the same in all States. It is generally twenty years; in some States fifteen, and in a few only ten. The limitation will not apply as against one who is under any legal disability, as one who is insane or one who is under twenty-one years of age. If the land belongs to such a person it must be adversely held during the period prescribed by the statute after such disability is removed in order to get a title that will hold against him. Neither will the limitation apply as, against a State or the United States, so that title to public lands can not be acquired by possession. Those who “squat” on the public domain therefore have to “move on” when the lands they occupy are sold by the government. It is to this class of people that the term “squatters” is most commonly applied.

It will be seen that mere possession is rather a precarious means of acquiring title to lands; and it will become more so as lands become more valuable. In an early day when lands were very cheap speculators sometimes bought large tracts, portions of which they sometimes abandoned. Lumbermen often “let their lands go” after having taken off the timber. Such lands were gener-

ally sold by the State for non-payment of taxes, and the purchasers took possession, and by that possession got good title. Theoretically their tax deeds gave them good title; but practically it has been found that tax deeds in most of the States are generally worthless, (see Chapter XXIV) hence possession as a means of getting title has been often resorted to in aid of the title given by tax deeds.

3. Accretion. Title to land may also be acquired by accretion, which is the gradual addition, through natural causes, of particles of soil to that already possessed by the owner. If one owns a farm bordering on a body of water which gradually deposits *alluvion* or sediment upon his shore, the additions so made belong to him even though they amount to many acres in the course of his life. Farms lying along many of the western streams have been in many cases largely added to as well as taken from by this means. Such gain or loss falls upon the owners of the farms. But the additions so made must be gradual and imperceptible or the rule will not apply. If they come by any sudden convulsion, as by the entire change in the course of a river caused by a flood or the like, then the boundary line remains where it was before. As a general rule farms lying along fresh water streams are held to extend to the middle or thread of the channel. That is, the land under the water belongs to the owners of the adjacent farms. In such case if an island forms between the middle of the stream and the shore, it belongs to the farm on that shore. If an island forms directly in the middle of the stream, then it belongs equally to the two opposite owners. Questions of much nicety have arisen upon this point concerning the lands along the Mississippi river. They have been decided so far as possible according to the doctrine as stated above.

4. Prescription. Title to real estate may be acquired by prescription, which is very much like possession and limitation, except that this term is strictly only used with reference to incorporeal interests in land—like easements or rights of way, water privileges, etc.—and not to the land itself. If one has used and claimed to own an easement for a long period of time, such use of it under claim of right will give him title to it by prescription. The period of time is fixed by the statutes of the various States, and is the same as that fixed for all real estate claims.

5. Estoppel. Title by estoppel is rather too technical a subject for full consideration in a popular treatise, and nothing more than a brief attempt to give a general idea of it will be undertaken here. Estoppel may be said to be a preclusion, in law, which prevents a man from asserting or denying a fact because of his previous acts or statements. It is the principle of law which will not allow a man to defeat his own acts or deny his own words to the injury or prejudice of another who may have been influenced thereby. An actual case will best illustrate the matter. Thus a Mr. Spiller once wished to purchase a certain lot of land in Vermont, and he went to a Mr. Scribner who owned the land adjoining and inquired where the boundary line ran. Mr. Scribner, knowing that the inquiry was made with a view of purchasing, pointed out the boundary. Mr. Spiller bought the land and put a fence on the line as it had been pointed out. Afterwards Mr. Scribner sought to show that the boundary line as so established was not correct, and that Mr. Spiller had fenced in a strip of his land which he wanted back. But the court said that Mr. Scribner must not go back on his word like that, and that he was estopped from asserting that the line pointed out by him was not the true line. So he lost some of his land by his careless or erroneous statements about the boundary, and Mr. Spiller got the title to it by estoppel. (1.) This one case will illustrate, as well as a hundred that might be cited, the idea involved in estoppel.

6. Public Grant. By this is meant the method of creating title in an individual to lands belonging to the government. The United States Government has possessed, and does now possess, an enormous amount of lands. At the time of the adoption of the Federal Constitution, all the territory within the present limits of the Union which had belonged to the British Government, became the property of the general government as successor to the British Crown. Large regions claimed by New York, Virginia, Connecticut, and other States, including all that country lying north of the Ohio river, formerly known as the "northwest territory," and other tracts, were ceded to the general government, and these, with the more recent acquisitions made by the purchase of Louisiana, Florida, and Alaska, have made up the vast quantity of lands which the government has been gradually disposing of. A great amount of these lands has been given to the States for educational

(1.) Spiller v. Scribner, 36 Vermont, 245.

purposes; enormous grants have been made to various railroad companies to encourage the building of railways; very many have been sold at public sale; others by private *entry* as it is called, upon application made to the Registers of the land offices in the various districts where the lands lie; still others have been selected by the holders of warrants from the government, given for meritorious service, or as bounties, etc., while an immense amount of them have been disposed of under the homestead, pre-emption, and tree-culture acts. As the last mentioned methods are specially important to those wishing a small portion of the public domain for agricultural purposes, it will be well to consider pretty fully the question of

7. How to Get a Farm from Uncle Sam. This kind hearted old fellow is very generous with his lands. He will sell them cheap, usually at \$1.25 per acre, and if the purchaser doesn't want to pay "cash down," he will give him time and not charge any interest; or if the purchaser hasn't any money or doesn't want to spend any money, he will give him a farm outright, and a very good one, too. In addition to this he will give him another farm of 160 acres out on some of the prairies if he will plant and make grow a certain number of trees upon it. What greater generosity could be wished? Let us see how to take advantage of it:

8. By Purchase from the Government. The lands comprising the public domain are classed, by the laws relating to their disposal, under several heads as follows: Agricultural lands, mineral lands, saline lands, desert lands and coal lands. The agricultural lands are held at \$1.25 and \$2.50 per acre. The great bulk of them are held at the former figure; the latter figure is placed upon those lying along railroads and other internal improvements where the alternate sections have been granted to the companies prosecuting such improvement. The sale of the agricultural lands has been and is from time to time authorized by Congress. So soon as there is any demand for them it is the policy of the government to have them placed on sale. But sometimes lands are held open to pre-emption and homestead entry which are withheld from sale. This is the case with the lands in the Dakota and other western districts where it is desired to encourage actual settlement and cultivation, and to prevent speculators from buying up the lands and holding them for a rise, a thing which often retards the development of a country.

When lands are authorized to be sold the President of the United States makes proclamation to that effect, describing the lands and giving the date and place of sale. Advertisement of the sale is made, in some newspaper published in the State or Territory where the lands lie, for three or six months prior to the sale. The lands are then offered to the highest bidder in half-quarter sections, but none are sold at less than \$1.25 per acre. Anybody can buy as much land as he chooses to bid off, but he must make complete payment therefor on the day of purchase. Credit cannot be given at a public sale—not even for a single day. If the purchaser fails to make payment on the day of purchase, the tract bid off by him is again offered at public sale on the next day of sale, and such person is not allowed to bid on it again, or on any other lands offered at that sale. (1.) All the lands so advertised for sale which remain unsold at the close of the public sale, are held subject to be sold at private sale, by entry at the land office, at \$1.25 per acre. Public sales are kept open for two weeks. So much for public sales.

When lands are purchased at private entry, the person desiring to purchase must furnish the Register of the District Land Office a written memorandum signed by him describing the lands by section, half-section or quarter-section, as the case may be, which he desires to buy. When application is so made by two or more persons for the same tract at the same time, the Register determines the preference by forthwith offering the lands to the highest bidder. The purchase price of the land must be paid at time of making entry. When the payment is made a certificate to that effect is given to the purchaser, which certificate has the effect legally of vesting the title to the land in the purchaser. A United States patent for the land duly signed by the President, or by a secretary appointed to sign his name, is delivered to the purchaser upon surrender of the certificate; but the certificate is regarded by the courts as of as high a nature as evidence of title as the patent itself. (2.) Still the patent is presumptive evidence of the regularity of all the proceedings (3) and it should always be procured and put on record in the county where the lands lie. Any person can buy as much land as he chooses by private entry; but lands cannot be so sold unless they have first been offered at public sale. Conse-

(1.) See U. S. Revised Statutes 2356; *Mathews v. Zane*, 7 Wheaton 164.

(2.) *Jackson v. Wilcox*, 1 Scammon, 344.

(3.) *Barry v. Gamble*, 8 Mo., 88.

quently, in those districts where the lands have not been offered at public sale, it is not possible to buy lands from the government at all. The only way to get them in such places is by pre-emption or homestead entry, or in some districts by tree culture.

9. Pre-emption. The pre-emption system of disposing of the public lands has been one of slow development. It arose mainly from the necessities of settlers, and the desire of government to assist those who wished to make homes for themselves and their families upon the public lands. The system is really a premium in favor of and a reward for making an actual settlement and a home in a new and unsettled country. The present system is the result of about sixty years of experimenting under numerous acts of Congress, having at first only local application, but gradually extending until now the system is practically universal in this country. Its benefits are extended to any citizen of the United States, or person who has declared his intention to become such under the naturalization laws, who is the head of a family, or is over twenty-one years of age, who actually resides upon the tract claimed, and who does not own 320 acres of land in any State or Territory. A widow is entitled to the benefit of the act, or a single man or woman, if over twenty-one years old, or a man under twenty-one years of age if he is the head of a family. And here it may be remarked that women stand practically on a par with men so far as the United States land laws are concerned. There is really no distinction on account of sex. Any person possessing these qualifications and desiring to "*pre-empt*" land may pick out and settle upon such a place on the unoccupied public domain as he likes. He must then, within thirty days, go to the United States land office for the district in which the lands lie and file with the Register a written statement describing the land settled upon by the proper surveyor's description, not exceeding a quarter section, and declaring his intention to claim the same under the pre-emption laws. He must then inhabit and improve the same in good faith. A person can only use the pre-emption right once, nor can he remove from land of his own to reside on the public land in the same State or Territory. Within twelve months from the date of settlement the pre-emptor must make proof of such settlement, etc., and pay for the land the minimum price of \$1.25 per acre. This is the case where the settlement is made upon land which is subject to private entry at \$1.25 per acre. If the settle-

ment is made upon surveyed land which has not yet been offered at public sale, and hence made subject to private entry, the pre-emptor has three months in which to file his declaratory statement and thirty-three months in which to make final proof and payment. This making proof consists of the pre-emptor's going to the United States Land Office for the district in which the land lies and making oath before the Register or Receiver that he has never had the benefit of any right of pre-emption; that he is not the owner of 320 acres of land in any State or Territory; that he is not making his settlement upon the land he seeks to procure in order to sell the same on speculation, but in good faith to appropriate it to his own exclusive use; and that he has not directly or indirectly made any agreement in any manner by which the title shall inure in whole or in part to the benefit of anybody except himself. He then receives his certificate for the land. Any person swearing falsely forfeits all right to the land and to the purchase money paid, besides becoming liable to prosecution under the criminal laws of the United States.

All the public lands belonging to the United States, the Indian title to which has been extinguished, are subject to pre-emption, except those included in any reservation, those within the limits of any city or selected as the site of any city or town, those occupied for the purposes of trade or commerce and not for agriculture, and lands on which are situated known saline mines. All others, including the unsurveyed lands of the distant west, are subject to pre-emption. If one settles upon these western unsurveyed lands he need not file his "declaratory statement" until three months from the time the survey is made and the plat filed in the district land office, and he is allowed thirty-three months from that time in which to make final proof and payment. This is the case, even though the survey is not made for several years after he has made his settlement. Such a settler must "watch out" for the surveyors and see to it that within three months after they come along he has his declaratory statement duly filed. If he fails to file his statement within the time prescribed he may lose his rights, for it renders the land liable for the claim of an adverse settler who does file a statement within the proper time. So, too, if he fails to make final proof and payment within the required time the land is rendered subject to appropriation by the first legal applicant. If it is more convenient for the pre-emptor to make his final proof before

the clerk of the county court or of any court of record in the county and district where the lands lie, he may do so. If the lands lie in an unorganized county the proof may be so made in any adjacent county in the same State or Territory. The proof when made is at once transmitted by the clerk of the court to the Register and Receiver with the proper fees and charges. In all cases before the proof is made the pre-emptor must give written notice of his intention to make such proof, stating therein the description of the land, and giving the names of at least two credible witnesses who will also swear to the necessary facts. Upon receiving such a statement the Register publishes a notice that such application has been made, once a week for thirty days in some newspaper published near the land, and also posts such notice in a conspicuous place in his office. After the expiration of thirty days the claimant is entitled to make the necessary proof; upon making which and paying the minimum price of the land he receives his certificate of purchase. This is in brief the procedure required by the pre-emption system. It may be added, however, that the proof of settlement, etc., must be such as is satisfactory to the Register and Receiver. These officials are given a little discretion in order to enable them to detect and prevent fraud, and to correct error. If they have suspicions in any case that fraud or deceit is being practiced they can withhold the certificate until the matter can be looked into.

The quarter section pre-empted must be the one improved and settled upon. But where by an error in the government survey it was found that the house of the pre-emptor was not within the tract for which he had paid, the court held that the Commissioner of the Land Office could not for that reason set the sale aside. The government was held to be bound by the original though erroneous survey (1.)

10. The Homestead Act. This law is one of the grandest pieces of legislation that the world has known. The idea of granting free homes to everybody, a home and a farm for everyone who asks, whether he be native or of foreign birth, patrician or plebeian, of high or low degree,—the oppressed of every clime and the poor of every nation, is indeed a sublime conception. It was thought of and talked of long before it assumed vital force.

(1.) *Lindsey v. Hawes et. al.*, 2 Black, 554.

It became a political question in 1852 when it was embodied in the platform of the "Free Soil" Democracy in national convention at Pittsburg in that year. Agitation upon it was constant for ten years until it became a law in 1862. This was without doubt the most important step in the history of our public land system, and its beneficial effects can hardly be estimated. The number of persons who availed themselves of its benefits, and who established homes for themselves and their families under its operation from the time it went into effect in 1862 until June 30, 1880, reached nearly half a million (469,782), and the area embraced by the farms so created and brought into fertile production was nearly fifty-six millions of acres. What a grand result to be accomplished in eighteen years! The number of entries made under this law during the past three years have been larger than during any other period of equal length. During the year ending June 30, 1883, 56,565 homesteads were entered and 8,171,914 acres turned into the "home farms" of happy and prosperous citizens.

The homestead law may be regarded as the crowning glory of our public land system, a system purely American in its origin and development. Fostered in its infancy by the matchless ability and genius of Alexander Hamilton, aided by the experience of Jefferson and Madison, and developed in its details under the careful watchfulness of our brightest statesmen, it stands to-day as the concentrated wisdom of legislation for the settlement of the public lands. It is good because it develops our new territory, benefits the most worthy and the most needy, builds up prosperous communities, and lessens the dangers of social and civil evils by giving the ownership of the soil in small tracts to its actual occupants.

To get a farm by this method a person must be the head of a family, or must be over 21 years old, and must be a citizen of the United States, or must have declared his intention to become such. A woman over 21 years old is eligible to this benefit, or if she is a widow and the head of a family she is qualified even though she be not yet twenty-one. There is no distinction on account of sex. Any such person is entitled to enter a quarter section or less of any unappropriated public land subject to private entry at \$1.25 per acre, or eighty acres of land subject to private entry at \$2.50 per acre. The person applying for the benefit of the homestead law must make affidavit before the Register of the proper land office that he is 21 years old or over, or is the head of a family, or has

performed service in the United States army or navy, and that his application is made for his own exclusive benefit, and for the purpose of actual settlement. On filing such an affidavit and paying the required office fee he is permitted to enter a homestead claim of 80 or 160 acres as the case may be. Any person who has entered land under the pre-emption method may change and proceed under the homestead method if he chooses to do so, and he may have the time required to acquire title under the homestead law computed from the time of his settlement on the land. Any settler on the public land who has settled with the intention of claiming the same under the homestead law has the same time in which to file his application for a homestead that one does to file his declaratory statement under the pre-emption law.

Having filed the required application the person must then within six months establish his residence in a house upon the land, and must live there continuously for five years; that is to say, he must make it his *bona fide* residence for that length of time. Of course a temporary absence of a few weeks or months would not vitiate the claim so long as the residence was actually there. But a visit to the land for a few months every year would not satisfy the law. The home of the claimant must be there and be kept there in good faith. At the expiration of five years from the date of entry, upon making due proof of residence, etc., the certificate of ownership is issued. Notice of intention to make final proof must be given in writing and filed with the Register, who publishes the same as in the case of making final proof under the pre-emption law. The proof is made by affidavit before the Register or receiver, but may, if more convenient, be made before the judge, or, in his absence, the clerk of any court of record in the county where the land lies, or in an adjoining county in the same State or Territory if the land is in an unorganized county. If the claimant dies before the five years expire the final proof may be made by his widow; or if she, too, is dead, by his heirs or devisees to whom the certificate will issue.

Under the homestead law a settler can, if he chooses, at the end of six months from the time of entry, make proof of settlement and improvement and get his land at the legal rate. Only a few of the homestead settlers, however, have seen fit to use this privilege. They prefer to live upon their land the five years required.

11. Soldiers' Homesteads. A union soldier or sailor of the late war is entitled to a deduction from the five years ordinarily required to get title, of the length of time that he served in the army or navy, not exceeding four years. The soldier must live upon the land at least one year. If the soldier is dead, his widow has the same rights; or if she, too, is dead, or married again, then the minor children of the soldier, if there are any, have the same rights. The minor children must have a guardian duly appointed to act for them. But neither the minor children nor the guardian are required to live upon the land. If they cultivate it and improve it during the time which the father would have been required to live upon it that will do.

A soldier of the late war is given the additional privilege of filing a "declaratory statement" of his intention to claim a certain tract under the homestead laws. This statement may be filed either personally or by an agent, and the soldier is then allowed six months in which to make his entry and settlement upon and improvement of the land. Soldiers are also given certain other minor privileges and benefits which can be better learned at the district land offices than explained here. But the idea that soldiers are entitled to land outright, or to the bounty land warrants, or that title to government land can be obtained for them by agents or attorneys, is entirely erroneous. Representations to the contrary are false. Soldiers, beware of swindlers who offer to locate lands for you. Go and do it yourselves, and you will certainly save expense and possibly save being cheated. This remark applies to any one getting land by the homestead or pre-emption method. There is no need of employing an attorney to assist you. The land office officials will see that you go straight. The Postmaster General has excluded from the mails the circulars sent out by several Washington and New York firms because of fraudulent representations made in them that by paying a fee and executing a power of attorney public lands can be located for soldiers. This is only a villainous dodge to get the "fee." The law provides that homestead lands shall not be liable to execution for the debts of the homesteader contracted prior to the issuing of the patent for the land. U. S. Revised Statutes, 2296.

12. The Timber Culture Act. Land may now be obtained from the United States government in return for planting out

trees in the treeless regions of the west. Public attention was early called to this matter, and the necessity of legislation upon it was urged soon after the extent and fertility of those treeless plains and prairies were made known. Some of the western States where this necessity was most apparent and most urgent began giving bounties of various kinds for planting trees. Kansas did much in this way, and in that and other States a day was set apart as a public festival on which everybody engaged in setting out trees. Many groves and banks of trees were in this way planted which served as wind-breaks against the fierce prairie storms. The lack of a source of fuel created apprehension, and this, with the belief which became prevalent that forests cause an increase in rain-fall, enable the soil longer to retain moisture, and tend to produce a more equal and beneficial distribution of water over the surface of the country, kept the matter constantly in mind and made it one of general public discussion. At last aid was solicited from the general government, petitions began to pour in upon Congress, and finally the timber culture act was passed in 1873. This act has reference only to the treeless regions on the western plains and prairies within certain limits. Under it any person who is a citizen, or who has legally declared his intention to become such, who is twenty-one or more years of age, or is the head of a family, who shall plant, protect, and keep in a healthy growing condition for eight years, at least ten acres of timber, on any quarter section of the public lands within the above limits, is entitled to a patent for the whole quarter section at the end of the eight years, on making the required proof of such facts by two credible witnesses. The act is liberal in its provisions; but a strict compliance with the letter and spirit of the law is required.

The applicant must first go to the Register of the proper land office and make entry of the land he wants; on doing so he is required to make oath that the entry is made for the cultivation of timber for his own use and benefit only, and that he intends to hold and cultivate the land.

Where 160 acres are taken, at least five acres must be plowed within one year from the date of entry. The following or second year the five acres so plowed must be planted or cultivated in some way, and another five acres must be plowed. The third year the first five acres must be planted to trees or to tree seeds or cuttings, and the second five acres must be cultivated in some way. The

fourth year the second five acres must be planted to trees or tree seeds or cuttings, making at the end of the fourth year ten acres planted to trees. They must then be carefully protected and cultivated in the best manner to promote their growth. If they die or are destroyed by fire they must be replanted. Congress has recently passed an act providing that if the trees or cuttings are destroyed by grasshoppers or by extreme and unusual drouth for any year or for a series of years, the time for planting such trees may be extended one year or as many years as they are so destroyed.

At the expiration of eight years from the date of entry final proof may be made. It must be shown that for eight years trees have been planted, protected, and carefully cultivated; that not less than twenty-seven hundred trees were planted on each acre, and that at the time of making proof there are at least six hundred and seventy-five living and thrifty trees growing on each acre. Perfect good faith is required. If it is found that there has been any lack of honest compliance with the law during any of the eight years the entry will be canceled. The trees must be of the kind properly called timber trees. Cottonwood is recognized as such under the rulings of the general land office. The claimant is not required to reside on the land, but only to cultivate and protect the trees. He can be at the same time acquiring title to another 160 acres under the homestead law.

13. Mining Claims. Lands valuable for minerals are reserved from sale, except as otherwise provided. But claims 1,500 feet long extending along any vein or lode of quartz or other rock bearing precious metals and reaching 300 feet each side of such vein or lode may be taken up by any citizen of the United States or any one who has declared his intention to become such, providing he does at least \$100 worth of work on each claim in each year. After at least \$500 worth of work has been done on any claim a patent will issue upon payment of \$5 per acre and the land office fees. The regulations made by the miners of any mining district, when not in conflict with the laws of the United States, are enforced as part of the laws regarding mining claims.

The subject of mining claims is one which fully treated would more than fill this book. The above very brief reference is deemed sufficient for a publication of this character.

Full directions as to how to proceed in all of these methods of

getting land from the government will be given to any applicant at any of the United States district land offices. Circulars of instructions giving full information as to methods of procedure are prepared under the direction of the Commissioner of the general land office at Washington, are approved by the Secretary of the Interior and sent to the local land offices for distribution to applicants for land. Any person can get these circulars by applying for them. The general land office at Washington is a bureau of the Department of the Interior presided over by an official styled the Commissioner, who is responsible to his chief, the Secretary of the Interior, which latter officer is a member of the President's cabinet. The district United States land offices are located all over the country, one in each land district. There are now (1883) 104 of them. The older ones are gradually abolished as the lands in the district become disposed of, and new ones are constantly created as the demand for public lands spreads into new territory. Such vacant tracts of public lands as may remain in Ohio, Indiana, Illinois, and other States where the offices have been abolished, are made subject to entry and location at the general land office at Washington. The officials of a district land office are the Register and Receiver. Their duties and responsibilities are independent of each other. They receive certain fees as compensation.

14. The Fees of the District Land Office are as follows:

In Alabama, Arkansas, Dakota, Florida, Iowa, Kansas, Louisiana, Missouri, Michigan, Minnesota, and Nebraska:

Filing declaratory statement for pre-emption claim.....	\$2 00
Filing final proof of pre-emption claim, 160 acres at \$1.25.....	4 00
“ “ “ “ “ “ 80 “ “ “	2 00
“ “ “ “ “ “ 40 “ “ “	1 00
“ “ “ “ “ “ 160 “ “ \$2.50.....	8 00
“ “ “ “ “ “ 80 “ “ “	4 00
“ “ “ “ “ “ 40 “ “ “	2 00
Entering under homestead law 160 acres at \$1.25.....	14 00
“ “ “ “ “ “ 80 “ “ “	7 00
“ “ “ “ “ “ 40 “ “ “	6 00
Entering under homestead law a claim of 160 acres at \$2.50.....	18 00
“ “ “ “ “ “ 80 “ “ “	9 00
“ “ “ “ “ “ 40 “ “ “	7 00
Final proof under “ “ “ “ 160 “ “ 1.25.....	4 00
“ “ “ “ “ “ 80 “ “ “	2 00
“ “ “ “ “ “ 40 “ “ “	1 00
“ “ “ “ “ “ 160 “ “ 2.50.....	8 00
“ “ “ “ “ “ 80 “ “ “	4 00
“ “ “ “ “ “ 40 “ “ “	2 00

In Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming:

Filing declaratory statement pre-emption claim.....	\$3 00
Filing final proof pre-emption claim, 160 acres at \$1.25.....	6 00
“ “ “ “ “ 80 “ “ “	3 00
“ “ “ “ “ 40 “ “ “	1 50
“ “ “ “ “ 160 “ “ 2.50.....	12 00
“ “ “ “ “ 80 “ “ “	6 00
“ “ “ “ “ 40 “ “ “	3 00
Entering under homestead law claim 160 acres at \$1.25.....	16 00
“ “ “ “ “ 80 “ “ “	8 00
“ “ “ “ “ 40 “ “ “	6 50
“ “ “ “ “ 160 “ “ 2.50.....	22 00
“ “ “ “ “ 80 “ “ “	11 00
“ “ “ “ “ 40 “ “ “	8 00
Final proof under “ “ 160 “ “ 1.25.....	6 00
“ “ “ “ “ 80 “ “ “	3 00
“ “ “ “ “ 40 “ “ “	1 50
“ “ “ “ “ 160 “ “ 2.50.....	12 00
“ “ “ “ “ 80 “ “ “	6 00
“ “ “ “ “ 40 “ “ “	3 00

Under the Timber Culture act:

Entry fee 160 acres.....	\$14 00
Entry fee 80 acres.....	9 00

The fee for reducing testimony to writing in making final proof in the Pacific States and Territories is 22½ cents per 100 words; in all other States and Territories it is 15 cents per 100 words.

After having received the certificate for the land from the Register of the District Land Office, the person receiving it can, if the land was purchased, assign it to any one to whom he wishes to sell the land, and in that case the patent will issue such assignee. But a certificate obtained under the homestead, pre-emption, or timber culture acts cannot be assigned. The patent must issue to the person who has earned the land. If he wishes to sell he should wait until he has obtained his patent. In order to obtain a patent, the person holding a certificate surrenders it to the district land office, from which it is forwarded to the general land office at Washington, and in the course of a year or year and a half a patent is sent back to the district office and is there given or mailed to its owner. By sending the certificate directly to Washington and employing an attorney there to hurry matters, the patent may be obtained more quickly. But it is rarely necessary to do this. It is, perhaps, needless to say that after a person has obtained his patent he can do what he pleases with the land.

UNITED STATES LAND PATENT.

The following is the form of a United States patent for a homestead of 160 acres:

The United States of America, to all to whom these presents shall come, greeting:

WHEREAS, There has been deposited in the General Land Office of the United States a certificate of the Register of the Land Office at Topeka, Kansas, whereby it appears that pursuant to the act of Congress, approved the 20th day of May, 1862, "to secure homesteads to actual settlers on the public domain," and the acts supplementary thereto, the claim of Herbert M. Snow has been established and duly consummated, in conformity to law, for the northwest quarter of section three in town ten north, of range five east, in said State of Kansas, according to the official plat of the survey of the said land, returned to the General Land Office by the Surveyor General.

Now know ye, that there is, therefore, granted by the United States unto the said Herbert M. Snow, the tract of land above described, to have and to hold the said tract of land, with the appurtenances thereof unto the said Herbert M. Snow, and to his heirs and assigns forever, subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water right as may be recognized and acknowledged by the local customs, laws, and decisions of courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law.

In testimony whereof I, Grover Cleveland, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the tenth day of April, in the year of our Lord one thousand eight hundred and eighty-five, and of the independence of the United States, the one hundredth and ninth.

By the President.

GROVER CLEVELAND.

By.....
Secretary.

{ L. S. }

JOHN SMITH,

Recorder of the General Land Office.

As soon as the patent is received it should be put on record in the county where the land lies in accordance with the laws there prevailing regarding the recording of instruments affecting the title to real estate.

15. Title by Office Grant. This is the term applied to the means of acquiring title to land made by some officer of the law where the owner of the land is either unwilling or unable to execute the requisite deed to pass title. Among the cases falling under this head are levies, sales upon execution, sales by order or

decree of some court, sales upon foreclosure of mortgages, sales by courts of probate and surrogate courts, sales by special acts of the Legislature, sales under the provisions of statutes for the enforcement of the collection of taxes, etc., etc. This method of acquiring title to real estate is too technical and too varied to admit of detail consideration here. Suffice it to say that where the title to property is conveyed against the will of the owner, or where he is not a party to the proceeding, the statute, by virtue of which the conveyance is made, must be strictly complied with. One purchasing such a title should see to it that every requirement of law has been observed. To illustrate: Where lands are sold for taxes the owner of them is generally given no hearing nor voice in the matter; it is purely an *ex parte* proceeding. The owner is utterly helpless to prevent the loss of his property. In such a case no departure from the exact letter of the law can be excused. Private property can only be taken by "due process of law," which in all such cases means an exact and absolute compliance with every provision of the statute. Hence it happens that if anything is omitted, or anything is overdone, the sale fails and the title so attempted to be conveyed is void. This is the explanation of the fact that tax deeds are generally found to be worthless. The proceedings for making them are usually somewhat complicated and the work is generally done by persons unaccustomed to the accurate transaction of legal business. Hence it is usually possible to find something wrong,—some departure from the provisions of the law, which renders the tax deed void.

With this general observation, and the exceptions which it implies, the title acquired by Office Grant is just as valid and effectual as if the owner had himself deeded the land by the ordinary form.

16. Title by Private Grant. The term private grant is applied to the ordinary and familiar method of acquiring title by purchasing the land from an individual and receiving from him a deed therefor. It is the most common and universal, and hence the most important method of procuring land. Let us see how to proceed: Having found a farm that the would-be purchaser desires to buy, and having agreed with its owner as to the price to be paid for it, etc., it should be remembered that a mere verbal or unwritten bargain for the sale or purchase of land is not binding upon

either party, and cannot be enforced by a law suit. Nor is an offer to sell the land at a given price, even though made in writing, binding upon the person so offering until actually accepted by the buyer; and the offer may be withdrawn at any time before it is accepted and notice of the acceptance given to the person offering. (1.) It would not make any difference if the offer expressly gave the purchaser a certain number of days in which to accept it. It may still be retracted at any time before acceptance, although the buyer had fully made up his mind to take the farm, and had gone to great trouble and expense in buying implements or stock and removing his family to the new place. He would have no remedy for the injury so done him if the owner saw fit to change his mind and refuse to complete the sale. Nor would it help him any if he had made a part payment or even full payment of the purchase money agreed upon. (2.) A payment of money is not enough to bind an oral contract for the sale of land, as it will in the case of a sale of chattles. And in some States even taking possession of the land would not bind unless there had been some improvements made upon it by the purchaser, or other arrangements made which could not reasonably be compensated for in money damages; the purchaser could not compel the seller to complete the sale, but could only recover back the money paid and get damages for the trouble he had been put to. (2.) But generally, however, where parties have gone so far as to have delivered and accepted possession, the court will decree a full performance of the contract. All this and much more of the same sort that might be mentioned is occasioned by what is known as the "Statute of Frauds." In the twenty-ninth year of the reign of Charles II (1677) the British Parliament passed this law, which requires that all conveyances of lands, and all contracts for the sale of lands or interests in lands, in order to be binding so as to be sued upon, must be in writing. Either the agreement or some memorandum, or note of it, must be in writing and signed by the party to be charged with it, or by some other person duly authorized to sign for him. This statute also contained other provisions, some of which are considered in another part of this book (see chapter 25 on sales); but this portion relating to real estate sales has been either adopted or assumed as law throughout the American States. Perhaps no two of

(1.) 4 Johns, 235.

(2.) Hill v. Meyers, 43 Penn., 170.

the statutes of the different States upon this point agree exactly in all their provisions, and it is only possible to here give the generally prevailing and nearly universal consequences of the law. It is safe to say that if parties wish to proceed cautiously they should never omit this memorandum. Its exact form is not a matter of much consequence so long as it states clearly the agreement. The form of memorandum given in the latter part of this book will probably suffice in all instances.

CHAPTER IV.

OF DEEDS.

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|--------------------------|----------------------------------|
| 1. Definition of a Deed. | 6. Covenants in Deeds. |
| 2. Requisites of a Deed. | 7. Execution of Deeds. |
| 3. Parties to a Deed. | 8. Delivery. |
| 4. The Consideration. | 9. Recording Deeds. |
| 5. The Description. | 10. Deeds Poll and by Indenture. |

Having agreed upon the terms of a sale of real estate and desiring to complete the same by passing the proper deed, it is important to carefully examine that instrument to see that it is in all respects regular. This is usually equally important whether one is selling or buying, for the trouble occasioned by a defective instrument may fall as much upon one party as the other.

Before passing the deed, however, both the purchaser and the seller should know that the latter has good title to the land; or, if the title is defective, just what the defects are. This is a matter of such prime importance that it is reserved for separate consideration in the chapter next following.

As bearing upon the legal requisites of deeds of real estate it may be observed that the title to lands can only be acquired or lost according to the laws of the country or State in which the lands are situated. (1.) Unlike some other written instruments which sometimes carry with them wherever they go the laws of the place where they were made, deeds must conform to the laws of the place where the land conveyed by them lies. Where parties in one State, therefore, are deeding lands lying in another, they should look to it that they comply with the requirements of the latter State. In some of the States, however, it is provided by statute that a deed shall be valid in those States if it is executed in accord-

(1.) Clark vs. Graham, 6 Wheaton, 577.

ance with the laws of the State in which it is made. But this is only an apparent exception to the rule above stated.

1. Definition of Deed. A deed is defined to be a writing sealed and delivered. A more limited definition, complying more nearly with the popular idea of a deed, is "a writing signed, sealed, and delivered by which lands, tenements, and hereditaments are conveyed for an estate not less than a freehold." (1.) That is to say, it is a written instrument conveying at least a life interest in lands. Of course an estate for years might be conveyed by deed, but it is usually conveyed by lease; so, too, a life estate might be conveyed by lease; but this is only a difference of forms and terms which are generally unimportant.

2. Requisites of a Deed. A deed should be written or printed, or partly written and partly printed, in ink, on parchment or paper; and it should be completely finished before it is delivered. It should have proper and competent parties to it; should be made without compulsion or restraint, and should ~~con~~tain the usual *formal parts*, which are as follows: 1. The *premises*, which embraces the names of the parties and usually their residences, the consideration for which the deed is given, and a careful description of the property granted. 2. The *habendum*, which defines the nature and extent of the estate which the grantee is to take. 3. The *redendum*, which is used when something is to be reserved to the grantor out of the estate granted, as where land is conveyed subject to mortgage, or a right of way across the land sold is reserved, etc. 4. The *condition*, when any is to be imposed upon the purchaser, as for instance that he shall not put a slaughter house, or tannery, or bone yard, or sell intoxicating liquors, upon the premises. 5. The *covenants*, when such are agreed upon, which in the ordinary warranty deed are three, viz.: that the grantor is well seized of the premises in *fee-simple*; that the premises are free from all incumbrances, and that he will forever warrant and defend the same. 6. The *conclusion*, which mentions the execution of the instrument, its date, and contains the signatures of the grantors, their seals, the signatures of the witnesses, and the certificate of the acknowledgment of the deed. No particular form of words or expressions are essential in deeds, only that apt words for the conveyance of title should be used, and the intention of the parties should be clear and distinct.

(1.) 2 Sharswood Blackstone, 294.

At the close of this volume the various forms of deeds in common use are given, and it is perhaps sufficient to say that one of these established forms should be used. They may sound rather odd and quaint, and there may seem to be some useless things in them, but after all it is unsafe to depart from old established forms and phrases that have been the product of many years, even centuries, of use, have survived by reason of their natural fitness, and have so many times passed before the courts that their meaning is clearly and certainly known. One does not want to try experiments in literary style or composition at the risk of losing his money or his farm. Even in those few States (1) that have by statute provided very simple forms of deeds it is safer to follow the old stand-bys.

3. Parties to Deeds. These are the person selling who is called the *grantor*, and the person buying called the *grantee*. The grantor should be of full age (21 or over) and of sound mind, otherwise his deed will not be binding as against him. Not so with the grantee. A deed to him, even though he be a minor or an insane person, will be good as against the grantor. If the grantor be a married man his wife should always join in his deed. Her name should appear following his at the beginning of the deed, she should sign and acknowledge the deed, and the certificate of acknowledgment should state that she is the wife of the grantor. It is necessary that the wife should join in her husband's deed in order to cut off her right of dower in his property. This right of dower is an inchoate interest which springs into existence upon the death of the husband. It is the right to the use of one-third of the husband's real estate during the time which the wife survives the husband. In the absence of a special statute enabling the wife to bar her dower by separate deed, she can only do so by joining in her husband's deed. Some of the States have such statutes. (2.) In some of the States the "homestead laws" have had the effect of making it necessary for the wife to join in her husband's deed, not merely to convey her dower, but to make the husband's

(1.) The Legislature of Michigan has enacted that a deed worded as follows: "A. B. conveys and warrants to C. D. the following premises,"—shall, if duly signed, sealed, and acknowledged by the grantor, operate the same as a full warranty deed. It is also provided that it is not necessary to use the word "heirs" to create an estate of inheritance. There is a similar provision concerning mortgages. Laws Mich., 1881, page 227. The expediency of such legislation is questioned.

(2.) See laws Michigan, Howell's Statutes, §5745.

deed effectual to pass the property to the grantee. These homestead laws, so-called, of course only affect the family home. The husband's deed of any other land need not be joined in by the wife except for the purpose of releasing her dower therein. If the wife does not join in the husband's deed the property conveyed passes to the grantee subject to the wife's dower. If she survives her husband she can, immediately upon his death, institute proceedings to have her third of the land, so conveyed, set off to her own use during the remainder of her life.

If the grantor of the deed is a married woman, it is now not generally necessary for the husband to join in the deed of her own property. The "married women's acts," as they are called, which have been passed in most of the States, enable married women to deal with their own property, that which they had before they were married and that which they subsequently acquire, just the same as though they were unmarried. At the old common law this could not be done, as the husband had an interest in the wife's real estate, and possessed the full ownership of all her personal property which he reduced to his possession.

The deed of a corporation should contain the legal name of the corporation at the beginning, and should be signed by its trustees, president or other officer or agent appointed for that purpose, or by its duly authorized attorney, and should bear the corporate seal.

Where a deed is made by an agent or attorney for another person, the capacity in which such agent or attorney acts should appear upon the instrument, and the authority necessary to enable such agent or attorney to execute the instrument should be given with the same formalities required in the execution of the deed itself. That is to say, there must be a power of attorney duly signed, sealed, witnessed, acknowledged, delivered, and recorded.

4. The Consideration. It is the custom to recite in the deed the consideration upon which it is given, usually the price paid for the land. It is not absolutely essential, however, that the exact amount paid be inserted in the deed, or that any consideration be expressed. An instrument under seal proves its own consideration, so that a deed is good even though there be no actual consideration, as is the case with a deed of gift. See page 7.

If the price agreed upon is inserted as the consideration in the deed, and the receipt thereof is acknowledged, the grantor is not bound by such a receipt; for if as a matter of fact the money was

not paid at the time of delivery of the deed, the grantor may sue for it notwithstanding his receipt. The fact, however, that the money was not paid would not invalidate the deed. Only that part of the deed which is a receipt would be open to denial.

5. The Description. The description of the land conveyed by the deed should be as minute and accurate as it is possible to make it. It is well in giving the description to refer to previous deeds by which the grantor obtained title. A deed thus referred to becomes for most purposes a part of the deed referring. If the description in previous deeds is not entirely correct, it may be referred to and a correct description also given. If the land is described by metes and bounds, and said to contain a given number of acres, the number of acres actually contained within the boundaries as given, will govern even though they are less or more than the number mentioned in the deed. So, too, if the land is described as a certain quarter section containing 160 acres, the number of acres actually found within the quarter section according to the government survey, will be the amount of land conveyed, no matter whether it contain 170 acres or only 130 acres. While perfect accuracy in the description is very desirable, an imperfect or loose description will not invalidate the deed if the intention of the parties can be arrived at; and parol or verbal and extrinsic evidence upon this point is generally admissible.

6. Covenants in Deeds. If a deed contains only the clauses necessary to effect a transfer of the title to the land, it amounts to only a *quit-claim* deed. It conveys the land, or all the right, title, and interest which the grantor has in the land; but it does nothing more than this. It does not warrant the title to the land, nor enable the purchaser to recover anything from the seller in case the title proves defective or worthless, and he loses the land. Hence purchasers always desire a *warranty deed* if they can get it. A warranty deed is one that contains, in addition to the clauses necessary to work a transfer of title, certain personal undertakings on the part of the grantor called *covenants*. These covenants are generally as follows: The grantor agrees for himself, his heirs, administrators, and assigns, that at the time of ensealing the deed he is lawfully seized of the premises about to be conveyed in fee-simple; that the premises are free from all incumbrances whatever; that he, the grantor, has good right to sell the same to the grantee; and that he will and his heirs, executors and administrators shall

warrant and defend the same to the grantee, his heirs and assigns forever, against the lawful claims of all persons. The effect of these covenants is to give the grantee or any person claiming under or through him the right to fall back on the grantor for damages if the title warranted by him proves worthless and the land is lost. The covenant against incumbrances and the covenant that the grantor is well seized of the premises are broken as soon as the deed is given if at all. The grantee could not recover anything more than nominal damages, however, until he had suffered some actual damage. If the grantee, therefore, in a warranty deed, were to discover an outstanding mortgage or other valid claim against the property, his proper course would be to either pay the mortgage or other claim, in which case he could recover the amount so paid from the grantor, or else let the mortgage be foreclosed, or the other claim mature into a paramount title, and he be evicted or put off the land, in which case he could recover possibly the purchase money he had paid with interest, or the value of the land with the improvements he had put on and lost. The question of the precise measure of damages in such cases, however, is not very uniformly settled, differing somewhat in different States. The covenant to warrant and defend has the effect of extending the personal liability of the grantor into the future. He agrees for himself and his heirs to defend the title conveyed against all lawful claims; and this agreement is made not only to the grantee but to his heirs and assigns. The covenant "*runs with the land*," as it is termed, and it binds the grantor and his representatives to all subsequent holders of the land.

7. Execution of Deeds. This includes the sealing, signing, witnessing, and acknowledgment. At the old common law the sealing was the most important thing in the execution of a deed. When the seal was properly affixed the instrument was regarded as *done*, that is, it had become a *deed*. The matter of sealing was then of much greater importance than it is now, because there were no public systems of recording deeds, and the instruments themselves had to be preserved as evidence of title, and proved in case of controversy. In the eastern States the formality of sealing is still required, and nothing short of a paper or wax seal wafered on will satisfy the law; but in the western and southern States generally a simple scroll of the pen or the letters L. S. are sufficient. It is even enacted in some of the States that no deed

shall be deemed invalid for want of a seal or scroll. The blank forms of deeds kept for sale by the newsdealers have in the western States a printed seal upon them, which is ample to fulfill the requirements of the law.

There should be a seal opposite the name of each person signing the deed; if, however, there is but one seal and several parties signing, all of whom should also have sealed, this one seal will be taken as the seal of each, and the deed will be good.

The deed should be witnessed in the manner required by the local statute. Generally, two witnesses are required. They should sign their names as such opposite the signatures of the grantors in the manner shown in the forms. The object of witnessing is to have some person whose attention has been called to the signing, who may be called upon to prove the grantor's signature if it ever becomes necessary to do so. Any person, therefore, of sufficient age and capacity to understand the nature of the act, can be a competent witness. It is not good form, however, to have a person who has an interest in the land conveyed, either present or future, witness the deed. A wife should not witness the husband's signature, nor should the husband the wife's. But these would not be serious errors. Witnesses are not required in all of the States, and some require but one.

The acknowledgment should be made before the proper official; usually the statute designates any magistrate, justice or notary public, who affixes a certificate to the deed that the party executing it personally appeared before him and acknowledged the same to be his free act and deed. In some States if the wife joins with her husband in a deed the officer taking the acknowledgment is required to examine the wife separately and apart from her husband and ascertain if she has signed the deed of her own accord, and without fear or compulsion from any one; and he must attach to the instrument his certificate to that effect. This is a relic of barbarism which should be and happily is being abolished.

8. Delivery. After the deed has been entirely completed it must be delivered to the grantee or his agent. It has no effect until it is delivered, and it amounts, until delivery, to no more than so much blank paper. If a man makes a deed and has it already for delivery, and intends to deliver it at the first opportunity, but suddenly dies before doing so, it is of no effect. Nor would it be even though he had received the pay for the land intended to be

conveyed. If the deed is lost or stolen it becomes void. So, likewise, if it is taken from the grantor by force or fraud, compulsion or deceit. The force, however, must be of a physical nature, as moral force might not invalidate the delivery, as, for example, I have a large claim against a man and I say to him "I must be paid at once." He says "I can't pay—I have no money." I say, "You have property; if you will give me a deed of a certain farm which you own I will call the matter square; if you will not I shall sue you at once and put you to much trouble." Thus forced he gives me the deed; and it is a valid deed, though obtained by a sort of force.

A deed may be delivered in *escrow*, as it is called, that is, given to a third party to be turned over to the grantee when certain conditions have been fulfilled, or certain acts have been performed or certain time has transpired. When the condition, whatever it may be, has been performed, the deed belongs to the grantee, and it takes effect upon his receiving it the same as though the grantor had delivered it to him personally.

9. Recording Deeds. In all of the States there are systems for making a public record of all instruments affecting the title of real estate, established and maintained for the purpose of giving certainty and notoriety to title. Any deed which has been duly and properly executed is admitted to record. It is the grantee's business to see to the recording, and he should see to it as soon as he receives his deed. If he does not do this, he may lose his land in consequence; for an unrecorded deed is generally not good as against a subsequent purchaser in good faith. To explain: If a knave deeds me his farm and I do not put the deed on record, nor do not take immediate possession of the land, and a little while afterwards he deeds it to another who, finding it still standing of record in his name buys in good faith, my deed would probably not be good as against his. True, I would have a claim against the knave for the money I had paid him, or I might put him in limbo for his fraud; but in all probability my claim would be worthless, and if I attempted to proceed against him criminally, I would probably find that he had run away. So, too, if A deeds me his farm and I put the deed on record at 10 o'clock, and B, who is a creditor of A's, levies an attachment on the same same property which he presents for record at ten minutes before ten, I would probably lose the land. And the same is true regarding mortgages. If I loan A

\$1,000 on his farm and neglect to record the mortgage, and B afterwards loans \$2,000 on the same farm and puts his mortgage on record ahead of mine, B would probably have the first claim on the land, and if the land were not valuable enough to satisfy both mortgages, I might lose my money.

But a deed that is not recorded is always good as against the grantor and his heirs. This would be true, also, were the deed not witnessed, or were it incomplete in other technical requirements. And it may be stated, as a general rule, that a deed which has not been recorded is just as good as one which has, against any one who knows of its execution and delivery. Even if one takes the land by subsequent deed and pays full value for it, it will give him no title if he had notice or knowledge of the unrecorded deed. As to what amounts to notice the courts have generally held that possession on the part of the grantee, if open and notorious, will give the world notice of his rights there. But this is not always the case, and it is not safe to rely upon it.

10. Deeds Poll and by Indenture. There are two general forms of deeds which should be explained. A deed poll is the deed of one party only. It is worded in this form: "I, John Doe, of Dearborn, do hereby grant, bargain, and sell to Richard Roe, etc." This is the form in most common use in the New England States. In the other States the general form of deed is an *indenture*, so-called, which is a deed between two or more parties, commencing in the manner following: "This indenture, made this day of, between John Doe, of Dearborn, party of the first part, and Richard Roe, of the same place, party of the second part, witnesseth as follows, etc." This difference is one only of form. In a deed by indenture the wife of the grantor is made a party to the deed; she is made one of the grantors if she wishes to release her dower. In a deed poll the wife is not mentioned as a grantor, but in the closing clause of the deed her name is mentioned, and it is stated that she signs the deed in token of her relinquishment or release of dower. The forms will illustrate this. Enough forms are given to show the differences in deeds in use in different portions of the country, and also to satisfy the various wants of parties in ordinary transactions. If no form suiting the exact requirements of any given transaction can be found the one nearest that desired can be readily altered to suit the emergency. See index of forms.

CHAPTER V.

OF EXAMINING TITLE.

I. General outline of the subject.

In the preceding chapter the statement was made that every person should, before accepting or giving a deed, be certain that the title to the land in question is straight and clear; or, if in any way defective, just what the defects are. The importance of this, to the grantor rests in the fact that if he convey by the ordinary warranty deed he becomes personally liable to the grantee, and to all persons claiming under the grantee, if the title is not good. If any valid claim is outstanding against the property the grantee may fall back upon the grantor for all the damage that he is put to because of it. If the grantor is dead, the grantee, or those claiming under him, may proceed against the grantor's estate.

To the grantee the importance of this matter rests in the fact that if the title prove defective, and the grantor at the time is pecuniarily irresponsible, he must bear the loss himself. Even if the grantor be responsible he may have removed from the State, or gone through bankruptcy, or other circumstances may make it difficult or impossible to collect anything from him. All things considered, it is more important for the grantee than for the grantor to be positive that the title is good.

The examination of a title in order to be valuable is a task requiring not only a great deal of painstaking care and laborious diligence, but a thorough knowledge of real estate law. It is a labor that the novice should not, as a rule, attempt. Better will it be to employ the best lawyer of your acquaintance than to take your chances on an uncertain title. I know that this is a matter that has been much disregarded by purchasers, especially in the western States, where real estate has been cheap, the source of title

near, and the conveyances affecting any particular piece of property generally few and simple. People have quite naturally come to believe that anybody of ordinary intelligence could determine with certainty the validity of a title. Not infrequently, however, have men lost much of their hard earned savings by this over-confidence, and the fact that sharpers have long successfully taken advantage of it, is sufficient indication of the correctness of the above statement that the task of examining a title is one that should be confided only to capable and experienced hands.

The work of looking up a title consists, in the first place, of examining the records of the various instruments affecting the ownership of the land in question,—the deeds from the government patent down; and the mortgages, attachments, liens, tax claims, notices *lis pendens*, etc., etc., if any there are,—to see that the same are all properly discharged. In the second place the work involves a looking into many extraneous facts—which do not appear of record—for, as we shall presently see, a title may appear perfectly clear of record, which in truth is very defective or altogether void. The first part of the work is greatly facilitated by what is called an *abstract of title*. This is a brief memorandum, taken from the records, showing the various instruments on record affecting the title to the land in question. Abstracts of title are generally prepared by the recording officers, or by other persons familiar with the records who make it a business to do such work. They are not official documents, and they have no weight in determining a title. If they bear a certificate, as many of them do, that the title is clear, such statement is really only the opinion of the person making it, and has no legal weight. The abstract is a valuable and almost indispensable help in the investigation, but it is by no means conclusive evidence of what it discloses. The following will illustrate the form of an

ABSTRACT OF TITLE

to the northwest quarter of section ten, town four south, of range six east, Indiana.

United States to William Smith.	}	Patent. Dated January 4, 1838; re- corded January 15, 1838, in Liber 4 of Deeds, page 769.
William Smith to Jacob Browning.		Warranty Deed. Dated June 5, 1840; recorded June 6, 1840, in Liber 10 of Deeds, page 769. Duly executed.

Jacob Browning and Susan Browning, his wife, to David Wilkins.	} Warranty Deed. Dated January 15, 1845, recorded January 20, 1845, in Liber 15 of Deeds, page 69. Duly executed.
David Wilkins to Paul Jones.	} Quit-claim Deed. Dated December 21, 1865; recorded Dec. 30, 1865, in Liber 75 of Deeds on page 78. Executed in the State of Kentucky and duly certified.
Paul Jones By Herbert Harvey, His attorney in fact, to John Brown.	} Warranty Deed. Dated February 10, 1875; recorded February 15, 1875, in Liber 197 of Deeds, on page 42. Duly executed.
Paul Jones to Hiram Hamlin.	} Mortgage, \$1,000. Dated June 7, 1867; recorded same day in Liber 49 of mortgages on page 88.
Hiram Hamlin to Paul Jones.	} Satisfaction of above mortgage. Dat- ed June 7, 1869; recorded June 9, 1869, in Liber 7 of Discharges, page 77.

I hereby certify that the above are all of the instruments affecting the land in the caption which are on record in my office. The title seems to be perfect in John Brown.

PETER PORTER,
Register of Deeds.

The above abstract of title is much shorter and simpler than the majority of them are. It is so straight forward, and shows with such apparent certainty that the title in John Brown is clear and perfect, that probably most purchasers would regard it as conclusive, and would accept a deed from John Brown, and pay him the money on it without the least suspicion of risk. Yet it is perfectly possible that such an abstract, and the record which it refers to, should exist, while John Brown's title is defective or even void. Further investigations will be necessary in order to insure entire certainty. What these investigations shall be depends upon the circumstances of each case; but taking the title, of which the above is an abstract, a careful investigation would involve something like the following: Inquiries should be made from every available source concerning the several grantors mentioned, with a view of learning their connection with the land, and of establishing beyond doubt their identity with the several grantees of the same

name. For it may be stated as a rule to which there is no exception that the record never identifies the parties. Outside inquiry is absolutely essential for this. There are many persons of the same name, and it is very easy for one man to assume another's name. For instance, in the above case, the land was entered by William Smith, who received the government patent therefor. If any other William Smith than the one to whom the government conveyed should give a deed of it, or if any one should falsely assume that name and so deed it, and the deed should be duly put on record, it would of course pass no title to the land.

The deed or patent from the government seems to be all straight, and such an instrument may generally be assumed to be correct. Yet it is possible for a government patent to be void. The government may have previously deeded the land to some one else and this patent may have been issued through mistake. If so, it would convey no title.

It will be observed that in several of the deeds the wife of the grantor, if he had one, did not join in the execution of the instrument. Inquiry should be made as to whether William Smith and David Wilkins were married, and if so, whether their wives were living at the time the deeds were made. If they were, it is possible that there is a dower interest outstanding against the land. The statute of limitations might not run as against a dower interest until twenty years after the death of the husband. It is a very long lived right, and it needs to be carefully looked out for in examining title. And it should be remembered that where a dower interest is released, as it appears to be in the deed from Browning, it is essential that the execution and acknowledgment of the deed by the wife are in due form, as required by the statute. A married woman has, at common law, no general power to sell her contingent right of dower during her marriage. It is only by virtue of some statute that she can do this, and the statute must be strictly followed or the deed may be void. See page 39.

The deeds of Smith, Browning, and Jones are referred to in the abstract as "warranty deeds," but it is not safe to depend entirely on that statement. They should be carefully examined all through to see just what covenants they contain. If either contains only a covenant against the grantor's own acts (as is the case with some warranty deeds so-called), it amounts really to but little more than a quit-claim deed.

The deed from David Wallace is a quit-claim deed. Although such a deed is, as we have seen, just as effectual to pass title, it gives the grantee no remedy against the grantor in case the title fails. If the grantor has perfect title it is all right, but if he has not, it may be all wrong. The fact of there being a quit-claim deed is at least a suspicious circumstance, and should put the investigator on his guard. If the grantor has no doubt of the validity of his title he will generally not hesitate to give the ordinary warranty deed, and if the purchaser is paying full value for the land he will insist on receiving one. If a quit-claim deed is taken, therefore, it usually indicates that either the grantor is afraid of his title or the purchaser is buying for less than full value and taking his chances.

The Wilkins deed, it will be observed, was executed in the State of Kentucky. Care must be taken to see that the provisions for the recording of such deeds have been complied with. The laws of the State where the land lies govern the methods and formalities of its transfer, and it is possible that a deed may be perfectly good in the State where it is made and still may be defective in the State where the land it attempts to convey lies. In each of the States there are statutory provisions for the authentication and recording of deeds, etc., executed in other States or foreign countries. These provisions must be substantially complied with.

The deed from Paul Jones is executed by his attorney in fact. The question arises, was the attorney duly authorized? It will be remembered (see page 40) that a power of attorney, in order to enable the attorney to legally sell and deed a certain piece of land, must be executed with all the formalities required for the execution of the deed itself. It must be signed, sealed, witnessed, acknowledged, delivered, and recorded. Its terms must be such as to authorize the execution of this particular deed. It must be in force at the time of making the deed, and care must be taken to see that it has not been terminated. This may be done by an instrument for the purpose, called a revocation of power of attorney, and such an instrument may be found to have been duly executed and recorded. If not so revoked, other things may have worked a revocation,—as, for instance, the death of Jones, or his bankruptcy or insanity.

The abstract shows but one mortgage upon the land, which appears to be fully paid and discharged, and the Register certifies

that there are no others. But it may be that there are mortgages which are not recorded, which still may be valid claims against the land. If any of the deeds refer to any unrecorded mortgages the purchaser would be bound by the information or notice so given; for it is a general rule that a man is regarded as duly notified of whatever appears in the deeds or other instruments which constitute his claim of title. And it makes no difference whether or not he ever read the documents, or that he did not actually know their contents. If, therefore, any of the deeds in the foregoing abstract refers to an unrecorded mortgage or any other valid outstanding claim against the land, the purchaser will probably take the property subject to such claim.

All the deeds likewise need to be carefully looked through to see that each of them contains the words necessary to pass full title. As we have seen (page 13), it is necessary that the words "*and his heirs*" should follow the name of the grantee, in order to create an estate in fee-simple. If land is conveyed to "John Doe and his heirs," he will take a complete estate of inheritance or the full ownership of the land; if it is conveyed to "John Doe" simply, the word "*heirs*" not being used, he will take an estate for life merely, and at his death the land will revert to the grantor or his heirs. This is the old common law rule, and it is still in force in most of the States. (1.) If any of the deeds do not contain this word "*heirs*" it is possible that the property may, on the death of some old party, vest at once in a stranger who will claim his rights.

The record of all the deeds in the abstract needs to be examined to see that the execution clause, and particularly the acknowledgment and attestation of each, complies with the recording laws in force at the time each was made. These recording laws provide that deeds which are executed in accordance with the statute may be recorded. If a deed, not executed in accordance with the statute be recorded, such record cannot be used as evidence. The deeds themselves may or may not be valid, but the record is a mere nullity. If any be found defective in this regard the original documents should be obtained and either properly corrected or new ones made.

The examination of a title upon this single point as to whether

(1.) Michigan and some other States have changed this by statute. Laws Michigan, 1881, page 227.

the deeds conform to the laws governing their execution and record is one requiring much labor and oftentimes research. The laws bearing upon the point are not uniform in all the States, and in each State they have been gradually changed from time to time. For example, in Michigan these laws have been changed in some particular every few years since 1787. Up to September 1, 1838, two witnesses were required; from that time till May 20, 1839, no witnesses were required; since then two witnesses have been required. The acknowledgment must be before a judge of a court of record, justice of the peace, or notary public; but from time to time since 1850, other officials have been empowered to take acknowledgments. Married women could only convey their lands prior to 1855 by the joint deed of themselves and husbands. Since that time they could convey their own property as if they were unmarried. See page 40.

Prior to 1877, a wife could bar her dower only by joining in the deed of her husband; since that time she could do so by separate deed to one who holds the husband's title, provided the intent to bar dower is expressed in such deed.

Curtesy was abolished in Michigan in 1855, prior to which time the husband had to join in the wife's deed to make it effectual.

The wife's acknowledgment prior to 1840 had to be that she executed the deed freely and without fear or compulsion from her husband, and the acknowledging officer had to examine the wife separate and apart from her husband. From 1840 to 1855 she had to acknowledge that she executed the deed freely and without fear or compulsion from *any one*. From 1855 down, the acknowledgment to conveyances of her own property was to be taken as if she were unmarried. From 1875 down, her acknowledgment to *all* instruments was to be taken as if she were unmarried.

This enumeration of statutory provisions and changes might be much longer continued, but the foregoing is sufficient to show the extent of information and research necessary to pass with certainty upon the validity of the execution of a series of deeds constituting a chain of title running over a number of years.

No tax claims, liens, notices *lis pendens*, or attachments are referred to in the foregoing sample abstract; but these should nevertheless be looked to, as the abstractor may not have thoroughly done so. A tax history or statement from the tax collec-

tor's office showing whether or not all taxes assessed against the land have been paid should be procured. It is customary for the grantor to furnish this.

In addition to all that has so far been said, it is possible that there may be other valid claims against the property, and claims, too, which do not in any way appear on the record or in any of the instruments constituting the claim of title. An easement, like a right of way, or right of drainage, or right to flow water over or dam it back upon the land, if such exists and is still in use, will be good as against any purchaser. In fact, any valid claim which is protected by actual use will not be lost by not appearing on record or in any instrument. And claims which in their origin were not valid may become so by being long enough actually used. For instance, in the foregoing case, the abstract shows that the deed from David Wallace was executed more than twenty years after he obtained title. Wilkins does not seem to have had actual possession of the land, as he resided in another State. Now suppose that during that time some one under some pretext, good or bad, had taken an adverse possession of the land and had kept it for 20 years? The effect would probably be to extinguish Wilkins's title; and all the deeds from that point down might be worthless.

All this illustrates the importance of making inquiry concerning all persons who have ever been in possession of the land, and under what claim of right.

A full discussion of this subject of the examination of title would fill a volume, but the foregoing, it would seem, is sufficient for a treatise of this character. It will at least indicate the correctness of what was said at the beginning of the chapter, namely, that the labor of looking up a title is one that should be trusted only to a good lawyer.

CHAPTER VI.

OF MORTGAGES.

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|----------------------------------------|-----------------------------------------------|
| 1. Definition of a Mortgage. | 9. Interest: Legal rates in different States. |
| 2. Requisites of a Mortgage. | 10. Compound Interest. |
| 3. Equitable Mortgages. | 11. Usury. |
| 4. Form of a Mortgage. | 12. Assignment of Mortgages. |
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| 7. Insurance. | 15. Redemption of Mortgages. |
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When a farm is bought or sold it very often happens that it is mortgaged back to the grantor by the purchaser for a part of the purchase price. It is desirable, therefore, whether one is buying or selling, that he know something of the legal character and incidents of these instruments, to the end that he may protect himself in his rights therein.

1. Definition of a Mortgage. A mortgage is a means of securing the payment of a debt. It is a conveyance of property to secure the payment of a debt or the performance of some other act to become void if the debt is paid or the other act is performed. A definition given by an eminent author is as follows: "A mortgage at common law may be defined to be an estate created by a conveyance absolute in form but intended to secure the performance of some act, such as the payment of money or the like, by the grantor or some other person, and to become void if the act is performed agreeably with the terms prescribed at the time of making the conveyance." (1.)

There are in this country at the present time two opposite theories or doctrines as to the nature of a mortgage, holding about

(1.) Washburn on Real Property, Chap. 16, § 1.

equal sway. According to one view, called the common law doctrine, a mortgage, like a deed, conveys to the one taking it the legal title to the land. It gives him the right of immediate possession, and he really owns the land just as though it had been deeded to him, except that his title is subject to be terminated by the performance of some act,—usually the payment of money with interest. If this act, whatever it may be, is duly performed, then his estate ends and reverts to the party who gave the mortgage. According to the other view, called the equitable doctrine, the debt to be paid is regarded as the main thing. The land is security merely. The person giving still retains the right of possession, still holds the legal title and virtually owns the land but subject to a claim which the party taking the mortgage has upon it to the extent of the money he has loaned, or to the extent of the amount mentioned in the instrument. Now these are only two ways of *looking* at a mortgage. The instrument is really the same whichever way it is viewed. Under either view it is now necessary to take certain legal steps before a mortgage can vest the full and complete title in the one who takes it.

The parties to a mortgage are called the mortgagor and mortgagee; just as the parties to a deed are called the grantor and grantee. Mortgages may be given of personal property as well as of real estate; but in this chapter we will consider only real estate mortgages.

The common law doctrine regarding mortgages prevails in the eastern part of this country generally, and the equitable doctrine prevails in the west. In all of the States east of the Mississippi river, except New York, Michigan, Indiana, and Wisconsin in the North, and South Carolina, Georgia and Florida in the South, the old English doctrine that a mortgage conveys the legal title and the right of possession prevails. It is also the doctrine of Missouri and Arkansas. But in all the other States of the Union, including New York, Michigan, and the rest of the excepted States above mentioned, the equitable doctrine, that a mortgage gives simply a lien on the land, but not the legal title nor the right of possession, is everywhere in force.

It may seem strange that there should be this difference in the theory of a mortgage, but it came about quite naturally. In early times in England, where the common law doctrine was enforced, often great hardships resulted from it. If the mortgagor failed to

perform the condition, failed to pay the money on the day specified, he lost his right to do so. He may have borrowed but a small amount of money on a very valuable piece of land, but if by oversight or misfortune he failed to repay it on the appointed day he lost all his rights in the land. So the Courts of Equity, which were early established for the purpose of giving relief in cases where the law was harsh and unjust began to give relief in these cases. Those courts looked upon a mortgage just as it really was—a security for a debt; and they held that if the debtor could pay the debt with interest he should be allowed to do so even if he were a little late; that the creditor could not complain if he got back his money with interest in a reasonable time, and that if he did so receive it he must give back the security. In process of time this relief granted by the courts of equity became generally recognized as a legal right, and hence two views or doctrines concerning mortgages sprang into existence. This right was called the right to redeem, or the equity of redemption, and so carefully was it guarded that a man was not permitted to lose it even by his own agreement. And at the present time if a man agrees in the most express terms that he will forfeit his right of redemption the courts will not enforce such an agreement, but will give him the usual time to redeem. The only way in which this right to redeem can be lost, is by giving what is called a power of sale mortgage. This gives the mortgagee, in case the mortgage is not paid at the time it expires, the right, after a certain number of days, to sell the land (providing he takes precautions to secure a fair price for it) and to retain out of the proceeds enough to pay the mortgage debt, with interest and costs, and pay the balance over to the mortgageor. The courts have sanctioned this procedure.

In this country some of the States have by statute adopted the equitable view of mortgages, while others, as we have seen, have retained the old common law doctrine. The right to redeem is recognized in all of them, and the period of redemption is fixed in most at three years from the expiration of the mortgage, but in some it is only one.

2. Requisites of a Mortgage. Any sort of a conveyance of land which is made for the purpose of securing a debt or the performance of some act, is a mortgage, and it matters but little what the form of it is. If it is made in the form of an absolute deed, and the grantee executes upon a separate piece of paper a *defeas-*

ance or agreement to reconvey, the two instruments together constitute a mortgage. If an absolute deed is given, and a mere verbal promise is made by the grantee to deed back again when something is done, it may even then be but a mortgage. In this latter case it is called an equitable mortgage.

3. Equitable Mortgage. There are many of this kind. For instance if one attempts to make a mortgage, but fails to make it properly so that it will hold in law, and receives a consideration for it, it will be held to be an equitable mortgage. An agreement to give a mortgage has many times been held to constitute an equitable mortgage. (1.) A deposit of title deeds for the purpose of securing a debt creates in England an equitable mortgage, and the doctrine has been adopted to a limited extent in America. A man who has sold land but has not received his pay for it, or taken a formal mortgage back for the amount of it, has, in most States, an equitable mortgage for whatever balance may be due him. This is usually called a vendor's lien. It obtains in Alabama, Arkansas, California, Colorado, District Columbia, Florida, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, Oregon, Tennessee, Texas, and Wisconsin. When a man pays for land before he gets his deed for it, he has, as to all persons who know of it, an equitable mortgage on the land. A contract to sell land sometimes amounts to an equitable mortgage of it.

This list of things which may constitute an equitable mortgage might be extended, but the foregoing will illustrate the principle. The design of this chapter is to treat of formal and legal mortgages. All the above cases are, really and strictly speaking, not mortgages but only what the courts of equity will hold as such for the purpose of promoting justice or preventing injury or fraud.

4. Form of Mortgage. In form a mortgage is usually just like a deed, with an additional clause called the *defeasance* which provides that if the grantor pays a certain sum of money, or performs some other obligation named, then it shall be void. The style of this defeasance is usually like this: "Provided, however, that if the said A. B. (the grantor), his heirs, executors, or administrators, shall pay to the said C. D. (the grantee), his executors, administrators or assigns, the sum of \$———, with interest

(1.) 20 Ohio, 464; 21 N. Y., 581; 31 Cal. 321.

(semi-annually or otherwise, as agreed upon), on or before the day of 188 . . . , then this deed and also a certain promissory note (or bond, as the case may be) signed by the said A. B. and bearing even date herewith, shall be null and void, but otherwise shall remain in full force.

It will be seen that so far as the form of a regular mortgage is concerned it is really a deed upon condition, the condition being the failure of the grantor to pay to the grantee a certain sum of money. If the money is paid the deed becomes void. Mortgages being so much like deeds, very much that was said respecting those instruments in the chapter devoted to them applies with equal force as to mortgages. Like a deed, a mortgage should be written or printed on paper or parchment. The parties to it should possess the same legal capacity, as to age, etc., that is required of the parties to a deed. The wife should join in her husband's mortgage the same as in his deed. There should be in a mortgage the same formal parts that are in a deed, the same careful description of the mortgaged property, the same covenants for title, and in addition to these, the defeasance clause above mentioned, and generally a power of sale clause, and often a tax, interest, and insurance clause, referred to further on.

The consideration, or the debt secured by the mortgage, should be carefully described, though it is not essential that it be described with great particularity. A general description will do, and a mortgage for an unknown sum, or an unliquidated indebtedness, is good. For instance, a mortgage is often given to secure a running open account on which the amount due is constantly increasing, and such mortgages are perfectly valid. But when the amount is certain it is almost universally the custom to have a note or bond accompany the mortgage. The note or bond are really a part of the mortgage, they are *construed* together, and each may be used in throwing light upon the other in case of doubt as to the meaning of either. The note or bond is used also to secure the personal liability of the mortgagor, so that if in case of foreclosure the property should sell for an amount less than the debt, the mortgagor would be personally liable for the deficiency. He would be liable for this deficiency anyway if the amount of it could be clearly proved; but the note or bond places the matter beyond all question, and does away with the necessity of other proof. Besides, if the note or bond be assigned its consideration cannot

generally be inquired into; the amount of the mortgage is thus fixed beyond dispute.

5. Execution, Delivery, and Recording. The same observations are to be made concerning these sub-heads that occurred under similar sub-heads in the chapter on deeds. Like a deed, a mortgage should be signed, sealed, witnessed, and acknowledged, and the same formalities in doing each of these things should be observed. It should be delivered, and as soon as delivered should be placed on record. The recording is for the protection of the mortgagee, and he should see to it and bear the expense of it.

6. Power of Sale. It is now the general custom in this country to insert a *power of sale* in mortgages. In England all mortgages contain this power by virtue of a statute to that effect, and the States of Virginia and West Virginia have similar statutes. A power of sale authorizes the mortgagee, on default in the conditions of the mortgage, to sell the land, keep the amount of his claim out of the proceeds, and turn the balance, if any there be, over to the mortgagor. The main object of this is to do away with the expense and delay of a suit in chancery, and to afford a more ready and expeditious way of cutting off the mortgagor's equity of redemption. The validity of these powers of sale is everywhere recognized. There are statutes in most of the States governing the manner in which the sale shall be made.

7. Insurance Clause. It is very common now, where the mortgaged property consists largely of buildings or other improvements which may be destroyed by fire, to have a clause inserted in the mortgage which provides that the mortgagor shall keep the premises insured in a certain sum for the benefit of the mortgagee. This is a valid provision, and a failure to comply with it will, if so expressed in the instrument, amount to a default which will give the mortgagee the right to foreclose. If there is no such clause inserted, the mortgagee would have no right in case of loss to any insurance which the mortgagor may have procured. (8 Paige, N. Y., 437; 20 Ohio, 185.) When a policy is taken out pursuant to the provisions of an insurance clause, it should be assigned at once to the mortgagee. If this is not done, however, the mortgagee will, if there is an insurance clause in the mortgage, have an equitable lien on the proceeds of the policy. (44 N. Y., 42; 52 Ill., 442.) If the policy of insurance provides, as is quite often the case, that the loss, if any, shall be payable to the mortgagee, that

will amount to the same as an assignment of the policy. (17 N. Y., 395.)

If a loss occurs and the amount of the policy falls due, the mortgagee is obliged to receive it and apply it to the reduction or extinguishment of the mortgage debt. (45 Me., 447.) If it will more than pay the debt the balance must go to the mortgagor.

8. Taxes. As it is as much for the interest of the mortgagee as for the mortgagor that the taxes on the mortgaged property be promptly paid, it is quite customary to insert in the mortgage a clause providing that the mortgagor shall pay all taxes and assessments levied upon the land, and that a failure to do so shall amount to a default. Such a provision is valid. Sometimes it is provided that if the mortgagor fails to pay the taxes the mortgagee may do so and may add the amount so paid to the principal of the mortgage. Some courts have held that the mortgagee may do this even if there is no provision to that effect, and that all amounts so paid for taxes may be included in any judgment afterwards obtained on the mortgage. (11 Kansas, 48.) A stipulation in the mortgage that a failure to pay taxes, procure and keep up insurance, and to pay interest when due, shall cause the whole mortgage debt to become immediately due and payable, is proper and valid. (44 Barb., N. Y., 336.)

9. Interest. The rate of interest which the mortgage is to bear, and the time and place of paying it should be carefully stated in the mortgage, and in the note or bond. It is a matter of much importance to have these things definitely settled and stated in the mortgage. If nothing is said about interest, the mortgage will not bear interest till after it is due. If it simply says with interest, but no rate of interest is mentioned in the mortgage, it will bear interest at the rate provided by law. The law which governs will in most cases be the law of the State where the parties live, though if the parties live in one State and the land lies in another, and the mortgage is to be paid in the latter State, the law of the latter State might govern. But the fact that the land, which is given as security for a debt, lies in another State, would not of itself take the transaction out of the operation of the laws of the State where the mortgage is made and the parties reside. (Story's Conflict of Laws, §287; 44 N. Y., 303.) If nothing is said about the place of re-payment, the presumption is that the mortgage is to be paid in the State where it is made, although the land mortgaged may

lie in another State, and the laws of the State where the mortgage is made will govern as to the rate of interest, etc. (53 Barb, N. Y., 350.) The law in force at the date of the mortgage will govern the rate. If the law is changed after the mortgage is made, the change will not affect it. (22 N. J., Eq., 444.)

The following are the legal rates of interest in the different States:

- Alabama.—8 per cent.
- Arizona.—10 per cent; but parties may contract for any rate.
- Arkansas.—6 per cent. Parties may contract for any rate under 10 per cent.
- California.—10 per cent. Parties may contract for any rate, simple or compound.
- Colorado.—10 per cent.
- Connecticut.—7 per cent. Usury forfeits the interest.
- Dakota.—7 per cent. Parties may contract for any rate under 12 per cent.
- Delaware.—6 per cent. Usury forfeits whole loan.
- District of Columbia.—6 per cent. Parties may contract for any rate under 10 per cent.
- Florida.—8 per cent where no rate is agreed upon, but any rate is allowed.
- Georgia.—7 per cent. Parties may contract for any rate under 12 per cent.
- Idaho.—10 per cent; but parties may contract for any rate under 24 per cent.
- Illinois.—6 per cent. Parties may contract for any rate under 10 per cent.
- Indiana.—Same as Illinois.
- Iowa.—Same as Illinois.
- Kansas.—7 per cent; but parties may contract for any rate under 12 per cent.
- Kentucky.—Same as Illinois.
- Louisiana.—5 per cent. Parties may stipulate for 8 per cent and a higher rate under certain circumstances.
- Maine.—6 per cent; but parties may agree in writing for any rate.
- Maryland.—6 per cent; any charge above that cannot be collected.
- Massachusetts.—Same as Maine.
- Michigan.—7 per cent. Parties may agree in writing upon any rate not above 10 per cent.
- Minnesota.—7 per cent. Parties may agree in writing for any rate under 12 per cent.
- Mississippi.—Same as Illinois.
- Missouri.—Same as Illinois.
- Montana.—10 per cent. Parties may contract for any rate.
- Nebraska.—10 per cent. Parties may contract for any rate under 12 per cent.
- Nevada.—Same as Montana.
- New Hampshire.—6 per cent. To charge more forfeits three times the excess.
- New Jersey.—7 per cent. Usury forfeits all interest.
- New Mexico.—6 per cent; but parties may agree upon any rate.
- New York.—7 per cent. Usury makes void the mortgage and note.
- North Carolina.—6 per cent; but parties may stipulate for 8 per cent.
- Ohio.—Same as North Carolina.
- Oregon.—10 per cent; but parties may contract for 12 per cent.

Pennsylvania.—6 per cent. If a higher rate is charged it may be recovered back.

Rhode Island.—6 per cent; but parties may agree upon any rate.

South Carolina.—7 per cent; but parties may agree upon any rate.

Tennessee.—6 per cent. Parties may contract for any rate not exceeding 10 per cent.

Texas.—8 per cent; but parties may contract for 12 per cent.

Utah.—10 per cent. Parties may contract for any rate.

Vermont.—6 per cent. Anything above that cannot be collected.

Virginia.—Same as Vermont.

Washington Ter.—10 per cent; but any rate may be agreed upon.

West Virginia.—Same as Virginia.

Wisconsin.—7 per cent; but parties may contract for 10 per cent.

Wyoming Ter.—12 per cent; but any rate may be agreed upon.

If the mortgage does not state the time of paying interest, none will fall due until the expiration of the mortgage, even though that may be for a number of years. It has been held however, that where there was an understanding or parol agreement that interest should be paid annually, it would so become due, even though the mortgage itself was silent upon the subject. But it is customary and proper to have stated in the mortgage the times at which interest shall be paid, as annually or semi-annually, or the like. When there is such a provision, a failure to pay interest at the time stated will amount to a default, which will give the mortgagee the right to foreclose. This is the general rule. (2 Verm., 135.) There may be some exceptions to it.

If the mortgage does not state the place where interest shall be paid, the general rule is that the mortgagor must find the mortgagee and pay him where he is. This is the reason why it is best to have the mortgage provide where interest shall be paid. Such a provision may save the mortgagor a great deal of trouble.

10. Compound Interest cannot be enforced. The usury laws of the different States generally prohibit it. If the interest is not paid when it falls due, interest on that unpaid interest is not generally collectible. Still if an interest bearing note is given for that interest it will be good. Hence it is quite often the case that persons loaning money have interest coupons attached to the mortgage, or to the note or bond accompanying it, which coupons are in effect promissory notes, and are held to draw interest after their maturity. In some States there are statutory provisions that if interest is not paid when it falls due it may be added to the principal. This the Ohio law. (26 Ohio, 59.) It amounts to compound interest. In Michigan interest is allowed on unpaid install-

ments of interest at the same rate that the principal bears. (Comp. Laws, Mich., page 541.) This is not compound interest, for only simple interest can be computed on unpaid interest.

11. Usury. If a rate of interest higher than the law allows is provided for in the mortgage, it is usurious and cannot be collected. Formerly to charge usury worked a forfeiture of the whole debt, and was punishable otherwise besides; but the laws in this respect have undergone a great change, and now about all that remains of their former stringency is a forfeiture merely of the usury above the legal interest. Indeed, in some of the States there are now no usury laws whatever, and parties may charge any rate of interest they may see fit to agree upon. Such is the case in Maine, Massachusetts, Rhode Island, South Carolina, Florida, California, Nevada, Utah, Arizona, Montana, New Mexico, Wyoming, and Washington Territory. In the States of Georgia, Connecticut, Indiana, Kansas, Maryland, Michigan, Minnesota, Mississippi, Ohio, Pennsylvania, Tennessee, Texas, Vermont, West Virginia, any charge of interest above the legal rates simply forfeits the excess. In Alabama, Illinois, Kentucky, Louisiana, Nebraska, New Jersey, Virginia, Wisconsin, Dakota, and District of Columbia, usury forfeits all interest. In New York, Delaware, North Carolina, Arkansas, and Oregon, usury makes void the security. In Missouri and Iowa to charge usury forfeits all interest and also ten per cent of the principal. In Idaho three times the amount of the interest is forfeited, and a fine of \$100 is imposed for charging usury. In North Carolina and Tennessee double the whole loan is forfeited for charging usury, and the act is made punishable as a misdemeanor.

12. Assignment of Mortgages. A mortgage, like any other property, may be sold, and the transfer of the title to it is accomplished by what is called an *assignment*. A formal assignment is accomplished by a short deed after the form given at the end of this book. Such a document duly executed and delivered will place the assignee or purchaser of the mortgage in exactly the same position that the mortgagee occupied.

The note or bond should be endorsed over or made payable to the assignee. The assignment should be recorded the same as a mortgage.

13. Payment of Mortgages. A payment of the amount due on a mortgage at the time the mortgage expires has the effect

of discharging it. If the payment, or tender of payment, is not made until after the mortgage expires it does not have the same effect. A reconveyance is then necessary in order to vest the estate in the mortgagor. But in New York, Michigan, and some other States a payment after the day named does discharge the mortgage and no reconveyance is necessary. Payment cannot be made before the mortgage is due, unless both parties agree to it, as neither has the right to enforce it. The place of payment ought to be mentioned in the mortgage. If it is not, the mortgagor is obliged to seek out the mortgagee and make payment where he can find him, the same as in the case of interest. If no time of payment of the mortgage is mentioned, the debt is payable on demand of either party.

If a legal tender of payment is made and refused interest will cease to run from that time. (42 Md., 192.) A tender to be good must be absolute, unconditional, and strictly within the terms of the mortgage. That is to say, the full amount due and no more must be offered in lawful money at just the right time, and it must be offered unconditionally. If it is refused, interest will cease at once. But the tender must be kept good, for if the mortgagee changes his mind he can still claim his money. If it is then not ready for him, interest will commence again. When a payment is made on a mortgage which is not sufficient to liquidate the debt, it is to be first applied to the payment of the interest due, and the balance is to be applied on the principal. (1 Clark N. Y., 470.)

If payment of the mortgage debt is not made within twenty years from the time it fell due the mortgage expires by operation of law and payment cannot then be collected. The mortgage "outlaws" as it is termed. The statute of limitations operates and prevents any action being brought upon it. The presumption is that it has been paid. This presumption, however, does not arise if there has been any admission of the debt any time during the twenty years,—as, for instance, the payment of any interest or principal within that time, or the commencement of a foreclosure suit. In some of the States a period less than twenty years is fixed by statute, and even without any statute nineteen years has several times been held as such a lapse of time as created a presumption of payment. (10 Johns, N. Y., 381; 15 Fla., 180.)

14. Discharge of Mortgages. When the mortgage has been

paid it is the duty of the mortgagee to execute the proper instrument discharging it. Payment, if properly made, will of itself discharge the mortgage in equity; but this alone does not give the means of discharging it on the records. Provision is generally made by statute for the discharge of the mortgage when paid either by a brief entry on the margin of the record of the mortgage signed by the holder of it, or by his executing an instrument called a *satisfaction of mortgage*, which is recorded at length in the public records.

If the mortgagee or holder of the mortgage refuses to thus discharge a mortgage which has been paid, he is made liable for the payment of a penalty to the mortgagor, varying in amount in the different States from \$100 to the full amount of the mortgage.

15. Redemption of a Mortgage. As has already been stated, it used to be the rule that if a mortgage was not paid at the time it was due the mortgagor had no right to pay it afterwards. No matter how small the mortgage debt or how great the value of the property, if the mortgagor did not pay on the day named he lost his property. The title to it became by operation of law absolute in the mortgagee the moment there was a default. During the last two hundred years the hardship of this rule has been greatly modified. A period is now always allowed in which the mortgageor may redeem his property on payment of the mortgage debt with interest and expenses. This right or equity of redemption is so zealously guarded by the courts that a man is not permitted to lose it even by the most deliberate and strongly expressed agreement. It can only be cut off by lapse of time and by *foreclosure*. The time varies in the different States. In New York and Wisconsin it is ten years. After a foreclosure and sale there is in some of the States a further period of redemption varying from sixty days to six years.

16. Foreclosure of Mortgages. A foreclosure of a mortgage is a proceeding in a proper court by which the mortgagor's right of redemption is barred or forever closed. It is usually done by filing a bill in chancery calling upon the mortgagor to come into court and redeem his mortgaged premises, on failure of which he loses his right to do so. If the mortgage is not paid when it matures, or if the interest is not paid at the time specified, or if the mortgagor fails to pay taxes or insurance as agreed upon, this right

to foreclose generally accrues to the mortgagee. A foreclosure of a mortgage now in many States includes a sale of the mortgaged property under the direction of an officer of the court, out of the proceeds of which sale the mortgage debt with costs is paid, and the balance, if any, is turned over to the mortgagor. Formerly a foreclosure simply cut off the right to redeem, and vested the property in the mortgagee. Where a power of sale is given in the mortgage it is now possible in many of the States to avoid the delay and expense of a bill in chancery by foreclosing by *advertisement*. That is, the mortgagee, by virtue of a power of sale given him in the mortgage, simply advertises the property for sale, and in accordance with the provisions of the statute, has the land sold at public auction by the proper officer (usually the sheriff), bids on it himself if he chooses, and from the proceeds receives the amount of the mortgage debt with costs, and the balance is turned over to the mortgagor, whose rights are then entirely cut off.

If the land does not sell for as much as the mortgage debt, the mortgagee can get judgment for the deficiency if there is a note or bond accompanying the mortgage. If there is no note or bond, judgment for the deficiency may be had if it can be clearly shown that the actual debt was more than the amount realized by the sale of the property.

The foreclosure of a mortgage is a piece of work requiring accuracy and care, and it should be given only into the hands of a good attorney.

CHAPTER VII.

DEEDS OF TRUST.

Sometimes instead of giving a mortgage to secure the payment of money, property is deeded to a third person *in trust*, as it is called, with directions that if the money is not paid as agreed upon he shall sell the property and pay the debt out of the proceeds. The deed in such a case is called a trust deed, and as will be seen it serves the same purpose as a mortgage. The person to whom the land is so deeded is called the *trustee*. He becomes the agent of both parties, and he must perform his duties with the strictest impartiality. A trust deed when used in place of a mortgage becomes, in legal effect, really a mortgage. It generally, however, vests the legal title in the trustee, even in those States where the equitable doctrine concerning mortgages is adopted. (Dillon, J., in 2 Am. L. Reg., n. s., 655.)

Deeds of trust are very often preferred to mortgages, and in some States they have entirely superceded mortgages as a means of security. They are by some thought to be better on account of the intervention of a disinterested person as trustee.

Trust deeds are used for other purposes than for the security of debts, but we speak of them now only in that capacity. The following form of a trust deed will explain this use of such instrument:

SIMPLE FORM OF TRUST DEED.

This deed of trust, made this day of by of Witnesseth: That for the purpose of securing to a note of this date, due in twelve months with interest from date at, I do hereby convey to in trust the following property (describing it.) And if the note is not paid at maturity,

I hereby authorize and direct the said to sell the property herein conveyed (state manner, place, time, and notice of sale, etc.), and to execute a deed to the purchaser, pay the amount hereby secured with interest and costs, and to hold the remainder subject to my order.

Witness my hand and seal, etc., etc.

CHAPTER VIII.

FIXTURES—THINGS THAT GO WITH THE FARM.

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| 1. What are Fixtures. | 10. Agricultural Machinery. |
| 2. Application of the Principles. | 11. Pumps, Sinks, etc. |
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If you have bought a farm or any other piece of real estate, and are about to move on to it, it is desirable to know what things in the shape of improvements which your grantor may have placed on it you are entitled to have remain there for your use. Or, if you have sold your farm and are about to remove from it, it is equally desirable to know what things of a removable nature you are entitled to take away with you, and what things the law requires you to leave there for the use of the man to whom you sold. Whether you have bought or sold it is important to know just what things, which in their nature are capable of being removed, are still to be regarded as part of the land, the title to which passes to whoever owns the land.

1. What are Fixtures? When any article or thing has become so annexed or affixed to the land that it has in law become a part of it, it is called a *fixture*.

The most general rule to be applied in determining what things are fixtures and what are not, is that *fixtures are any chattels which have become substantially and permanently annexed to the land or to buildings or other things which are clearly a part of the land.*

For example: All houses, barns, fences, bridges, trees, growing crops, etc., are fixtures; they are a part of the land and pass to whoever buys the land. The means by which the fixture is annexed may be either physical, as is the case with buildings and trees, or it may be purely theoretical or constructive as is the case with the keys of a house which may be on a key ring in the owner's pocket, or the title deeds of the place which may be locked up in some safe, both of which are really a part of the land.

It is said that the fixture must be so annexed that it cannot be severed without injuring the freehold. For example: A range or grate set in brick work is a fixture (7 Mass., 432), while a stove with loose pipe is not. (24 Wend., 191.) Mantel pieces attached to the chimney so that they cannot be removed without marring the plastering are a part of the house and go with it; but if merely resting on brackets they are not, and may be taken away by the person selling the place. (102 Mass., 517.) Frescoes on the walls of a house could not be removed on a sale of it, but pictures hanging on the walls which could be removed without hurting the walls are personal property, and may be carried away by the former owner. Yet there are many things so frailly attached to the realty that they could be removed without injuring it, which are still clearly a part of it, so that this last rule will be found not to work in many cases. For example: Doors, windows, blinds, shutters, etc., which may be removed without the slightest damage to the house, and which may at the time of sale be actually detached from the house, would still be deemed a part of it, and would pass with the land. (4 Metcalf, 306.) So, too, on the other hand, mirrors, wardrobes, and other heavy articles of furniture which may be tightly screwed to the walls, and which possibly could not be removed without slight injury to the house, must be regarded as chattels belonging to the former owner. (4 Metcalf, 306.) We see, therefore, that the foregoing rules are not decisive in all cases of the question of what constitutes a fixture. It hence becomes necessary to add that the *intention* of the party making the annexation often determines whether the thing annexed shall be part of the real estate or still remain a chattel.

INTENTION DETERMINES.

If a chattel is annexed to the freehold, with the intention of making it a permanent accession and improvement to it, it then becomes a part of the land. (40 N. Y., 287.) This criterion will

be found of more controlling importance in determining this question of fixtures than the others that have been mentioned; yet the true criterion, says the New York Court of Appeals in the case above cited, is the united application of all these requisites. Applying the principle of intention it has been held that rails placed along the line of a proposed fence for the purpose of being laid into the fence, though not at once actually applied to that use, must be regarded as fixtures, and pass by deed of the land. The intention to appropriate the rails to the use of the land is sufficient to make them a part of it. (1 Chandler's R., 240.)

Likewise when a thing has once become a fixture it will not lose its character as such and become personal property again by being severed from the soil, unless there is the intention to permanently detach it from the land. So the materials which have been once used in a fence but have been taken down and piled up for future use in the same place are regarded as still a part of the land. (2 Hill, 142.)

2. Application of the Principles. These rules regarding what constitutes a fixture are applied with considerable strictness as between the seller and the purchaser of a farm. Every thing which belongs to the farm goes with it—everything which the seller erected there, whether for purposes of trade and manufacture or for convenience or ornament, unless they have been specially reserved in the deed. (6 Cow. N. Y., 663.)

As between mortgagor and mortgagee these rules are applied with even more strictness. They are always construed most strongly in favor of the mortgagee. Everything which the mortgagor affixes to the land after he has mortgaged it will, in case of foreclosure, pass with the land to the party purchasing. (15 Mass., 159.)

But as between a landlord and his tenant, the strictness of these rules is much relaxed. All that is required of a tenant is to leave the land occupied by him in as good condition as it was when he rented it. Everything, therefore, which he annexes to the land for the purpose of *ornament, domestic convenience, or to carry on a trade*, may be removed by him at the expiration of his tenancy, provided he can do it without materially injuring the freehold. (16 Mass., 449; 7 Barb., 263.) The presumption in these cases is that it was not the intention of the tenant to make the things which he annexed to the premises for the above purposes permanent acces-

sions to the freehold. He is presumed to act naturally, and for his own interests, and to have intended such annexations only for temporary use during his tenancy. (1 Ohio N. S., 511.)

These general observations will be illustrated by the following enumeration of things which the courts have held to be fixtures, and as such to pass by deed of the land:

3. Things Held to be Fixtures. As between the seller and the buyer of land the following are regarded as fixtures:

4. All buildings of whatever nature standing upon the land go to the purchaser. It is customary to mention buildings in the deed, but it is not necessary to do so; being a part of the land they would pass with it. And it has been held that the materials of any old building which has been taken down or has been blown down, and have been packed away for future use upon the farm would pass with it. (41 N. H., 505.) The reason of this is that there has never been any intention to sever the materials which composed the building from the soil to which they belonged. Had there been such an intention, as for instance, had the materials been piled up for sale or to remove to another farm, they would then have become personal property, and would not pass with the land. It may seem strange that the mere thought in the mind of the owner at the time he handles the materials should make all the difference between real estate and personal property, but a little reflection will show it to be good common sense. The *intention* of the mind is a very potent thing. If I kill a man because I think he will at once kill me if I don't, it is justifiable homicide; if I kill him because I hate him and want him out of the way, it is willful murder. In one case I am excused, or possibly applauded; in the other I am hanged.

Of course it is possible for buildings to be personal property, and not a part of the land on which they stand. The owner of land may allow any one to put buildings on it, and may agree that the buildings when erected shall belong to the man who builds them. Such buildings would then be personal property, and the title to them would not pass with the title to the land. In case of a sale of the land, the owner of the buildings could move them off, even though the purchaser supposed he had bought them. (38 N. H., 429; 19 Conn., 154.) But the purchaser would have a claim against his grantor under his covenant of seizin, and could proceed against him for the damages caused by the removal of the build-

ings. For he had a right to suppose that buildings which were attached firmly to the land were in fact part of it, and if he found they were not, such fact would constitute a breach of covenant. (17 Vt., 403.)

Everything which is a part of any building on the land goes with it, as the doors, blinds, shutters, keys, furnaces (either brick or portable, see 75 Ill., 385), grates, and in fact everything which was intended by the owner to be a permanent part of the building. Any of these things which are removed temporarily at the time of sale are still a part of the building; though new articles which have been bought but are not yet attached at the time of sale are not fixtures. (40 Vermont, 233.)

5. Household Furniture, curtains, carpets, pictures, stoves, etc., are personal property, and may be carried away by the owner on a sale of the land. But a range or grate is, as we have seen, when set in brick work, a part of the house. (7 Mass., 432.)

6. Fences of all kinds and fence materials which have been once used, but which may be taken down and piled up for future use in the same place, are a part of the land and go to the purchaser. (43 N. H., 306; 2 Hill, 142.) New fence materials which had never been built into a fence would not pass as part of the land. (16 Ill., 480.)

7. Growing Crops are fixtures and pass with a sale of the land. (9 Cow., 39; 46 Barb., 278.) If they are not specially reserved in the deed they become the property of the purchaser, notwithstanding there may have been a verbal agreement that the grantor should retain them. Being a part of the land, they pass by a deed of it, and a mere verbal agreement to the contrary will not be allowed to set aside the deed, which is a written agreement. (19 Pick., 315; 22 N. H., 538.) This is because of the rule that parol, verbal, or spoken evidence is not admissible to contradict or vary the terms of a written instrument. The same is true regarding any fixture which it is desired to reserve to the grantor. It must be done by so stating it in the deed, as a verbal reservation will not be binding upon the grantee. As soon as a crop is gathered or severed from the ground it becomes personal property. See Chap. xxx.

8. Nursery Trees growing upon the land are fixtures, and pass to the grantee unless specially reserved in the deed. (39 Ill., 28.) If they belong to a tenant, however, he may remove them at the expiration of his lease.

Hop poles when standing in the field with hops growing upon them are a part of the land. And if at the time of sale they are taken down for the purpose of gathering the crop and are piled up in the yard with the intention of being replaced the next season, they still go with the land. (11 N. Y., 123.)

Trees of all kinds growing upon the land are a part of it. If they are blown down or cut down and are still lying where they fell, they are yet a part of the land. (54 Me., 309.) If cut and corded up for sale they then become personal property.

9. Manure. All manure made in the ordinary course of carrying on a farm passes on a sale of it as a part of the land. It makes no difference whether it is scattered in the fields or lying in the barnyard, or in heaps under the barn windows, or piled under cover. (22 N. H., 538.) This rule is applied also between landlord and tenant. Good husbandry requires that the manure made on a farm remain there, and it is universally held to be a part of it as soon as it is dropped. (See many cases in Tyler on Fixtures, 340, 355.) If at time of sale manure had been sold to a third party and had been piled up ready to be carried away, then possibly it would not pass with the land. (43 Vt., 95.)

10. Agricultural Machinery. Farm implements of all sorts, such as wagons, plows, harrows, mowers, reapers, rakes, and all similar articles of a movable nature, are of course chattels, and may be carried away by their owner upon a sale of the farm. But there is a class of machines generally actually annexed to the land, but sometimes only constructively annexed, which from their character in subserving an important and permanent use upon the farm, are held to be a part of and to pass with a deed of it. In this class are *cotton gins*. These, with the gearing connected with them, are in the southern States generally held to be a part of the land on which they are located. (7 N. C., 369; 2 Strobhart, S. C., 478; 48 Miss., 1.) A *carding machine* standing on the bank of a river and run by a water wheel, and which was very heavy, requiring several men to move it, though not fastened to the house in which it was used, was held to be a fixture. (72 N. C., 582.) A *portable grist mill* which had been fastened in a building on a farm, which was designed to be a permanent public grist mill for the neighborhood about it, was held to be a fixture and to pass with the land. (40 N. Y., 287.) *Dye kettles* secured in brick work are a part of the realty. (15 Mass., 159.) A *still* put up for distilling,

encased in brick, is a fixture; so is a large copper kettle, put up for cooking food for hogs, encased in brick and mortar. (5 Jones, 337.) A *cider mill* was held to go with the land. (41 N. H., 504.)

11. Pumps, sinks, etc., fastened to a building are a part of it in law; also water pipes bringing water from a distant spring. (97 Mass., 133; 99 Mass., 457.)

12. Machinery in General. The rule in regard to this is that the motive power of machinery, and generally the connecting power, like the shafting, etc., both of which are in their nature stationary, are, as between vendor and vendee, always fixtures. The machinery impelled is sometimes a fixture and sometimes personal property, according to the way it is annexed, etc. The cases bearing upon the subject are very numerous, and cannot be referred to here. (See Tyler on Fixtures, 546.) All the machinery of a cotton mill which is necessary to its use as such was held to be a part of the realty. (15 Penn., 507.) The saws belonging to a saw mill go with the mill. (43 N. H., 390.) A steam engine, though not fastened down, but which could not be taken out without tearing down part of the building in which it was placed, was held to be a fixture. (12 N. H., 205.) In fact all *stationary* machinery by which other portable machinery, such as lathes, etc., is impelled, are fixtures. (26 Ala., 493.) All the machinery of a flouring mill goes with it as a part of the land. (9 Cal., 119.) But it was held out in Nevada where a saw-mill had been built upon timbers lying loose on the ground and constructed with the object, after sawing the timber near at hand, of removing it to another place, that such a mill was personal property and could be removed by the grantor. (6 Nev., 244.)

13. Farm Bells. It was held in Texas that a bell, though used for farm purposes, was not a fixture, if it only sets on posts and is not permanently affixed. (37 Tex., 413.) But in Massachusetts a bell in the cupola of a barn hung in a frame which was nailed down, was held to be a fixture. (102 Mass., 514.)

14. Gas Fixtures. No definite rule can be laid down concerning gas fixtures. They are sometimes regarded as fixtures and sometimes as personal property, according to the circumstances of each particular case. (4 Daly, 359.) As between landlord and tenant they are almost always regarded as chattels; and between vendor and vendee they have often been so regarded, being so much like ordinary lamps, brackets, etc., which are clearly chattels

in their nature. (2 R. I., 157.) Still the courts have frequently held that gas fixtures are a part of the realty (40 Mo., 91; 3 Stockt., 84), and it is perhaps only safe to say that their character will depend on the circumstances of each case.

15. Stones, etc. All stones, ores, and other minerals, whether lying loose upon the land or in ledges, mines, or quarries, are of course a part of the land; but a stone split out from its original place in a ledge does not necessarily pass by deed of the land. If it was severed with the intention and for the purpose of being used on the land, it is then regarded as still a part of it; but if severed in order to be removed and used elsewhere, it has become personal property and will not pass on a sale of the land. (42 Vt., 146.)

16. Statues erected as ornaments in the grounds, and sun dials fixed upon stone foundations, are fixtures. (12 N. Y., 170.)

17. The Title Deeds which constitute the evidence of ownership of land are regarded as a part of it, and pass with it. In this country deeds, after being recorded, are generally not in themselves worth much.

18. Heir-looms, etc. There are certain articles which, as between the heir of an estate and the executor or administrator, are regarded as fixtures, and go to the heir along with the land. These are *heir-looms* (old family articles of furniture or plate or pictures or the like which have been handed down from one generation to another); also the deer in a park, the fish in a pond, doves in a dove-house, and the conies in a warren.

It may be again observed in concluding this chapter that the things above enumerated are what have been declared to be fixtures as between the seller and buyer of land, so that they will pass to the one who buys along with the land. They would certainly all be held to be fixtures as between mortgagor and mortgagee; but as between landlord and tenant many of them would not be, and the tenant would probably have the right to take many of them away along with his other personal property. This matter is more fully explained in the chapter on "Landlord and Tenant."

CHAPTER IX.

APPURTENANCES, ETC.

Beside the land itself, and beside the fixtures which are annexed to it, the deed of it covers and conveys to the grantee certain other things. Some of these things are regarded as *appurtenances*, that is, things which are appendant, or related to, or dependant upon, the land conveyed; and some are regarded as *parcels* of the land itself. Both pass to the grantee, whether they are specifically referred to in the deed or not. There is a very old legal maxim to the effect that *whoever grants a thing is held also to grant that without which the grant itself would be of no effect.* (Broom's Maxims, 362.) The object is in all cases of doubt to arrive at what must have been the *intention* of the parties, so in construing a deed, the courts will *imply* a grant—if it is not expressed—of whatever is necessary to carry the direct grant into effect. To illustrate: If I sell a thing I am held to sell also the means of attaining that thing, providing I own the means, and common sense would indicate from the surrounding circumstances an intention to convey them. Thus if I sell Smith a piece of land in the center of or entirely surrounded by my other land, I thereby sell Smith the right to pass over my other land to get to that which I sold him. This right of way over my land becomes *appurtenant* to Smith's land, and passes to whoever Smith sells to. The right becomes a *servitude*, as it is called, upon my land, and my land continues subject to it after I have sold it.

Among the things which thus go with land to whoever buys it are all the *easements* which are appurtenant to it. Easements are the rights which a person, as the owner of one piece of land, has in the lands of another. These easements pass on a sale of the land

to the grantee, as is illustrated in the above case. We shall learn more about them when we come to the chapter on the subject of easements. (Chapter XI.)

But there are many other appurtenant rights which pass as incidents of the ownership of land, and which it is not possible to group under general heads. They are to be inferred or implied from the circumstances of each particular case. Thus the sale of a mill carries the use of the water by which it is worked, the flood-gates, dam, and all things necessary for its use, as well as the land on which the mill stands, and the right to maintain the dam. (43 N. H., 540.) The sale of a "dwelling house and outbuildings belonging thereto" was held to carry the land on which the house stood, and also a barn which was used with the house and the land under it. (53 Me., 81.)

The sale of a "house," "cottage," "wharf," "pit" or "pool," when these words were used as general terms of description in the deed, was held to carry the land upon which they were located as well as the things themselves. (6 Gray, 107.)

The sale of the right to dig a trench in which to lay water pipes carries the right to enter, dig, and keep the same in repair. So a sale of mines on one's lands carries the right to dig for and work them. But a grant or deed of anything of this sort, or of a "way" or "road" only carries the right to the use of the thing, but conveys no title to the fee of the soil composing it. The *fee* of the land will not be conveyed unless that is necessary to fulfill the intention of the parties or the object of the grant. (44 N. H., 464; 22 Pick., 333.)

A grant of land carries all mines in it (1), but a grant of mines does not carry the land. As has been said, grants which are not expressed in the deed are sometimes implied from those which are. This doctrine is well illustrated by a case in Connecticut where a man, through whose land a stream flowed, granted to the owner above a right to throw the washings of ore into the stream, and to deposit themselves on the grantor's meadow below. In time the meadow became so raised that the washings flowed off on to his adjoining pasture. It was held that the right to continue to throw the washings into the stream, and to have them thus deposited, passed as an incident to the principal grant. (31 Conn., 150.)

(1.) See note on page 10, as to mines of gold and silver.

CORNELL UNIVERSITY, ITHACA, N. Y.

CHAPTER X.

FARM SURVEYING—THE BOUNDARIES OF A FARM.

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| 1. Monuments. | 7. Lakes, etc. |
| 2. Courses and Distances. | 8. The Sea. |
| 3. The Quantity of Land. | 9. Highways. |
| 4. Parol Evidence as to Boundaries. | 10. Surveys. |
| 5. Streams, etc. | 11. Acquiescence. |
| 6. Artificial Ponds. | 12. Meander Lines. |

Having purchased a farm and obtained possession of it, together with all that goes with it, it is desirable to know just how far it extends or just what its true boundaries are; or if these or any of them are uncertain or in dispute, what rules to apply in determining them.

The most general rule that can be laid down in this connection is that where visible objects, such as trees, streams, stones, or posts, mark the boundaries, they are to govern in determining location, no matter whether the boundaries so located agree with or conform to those marked by other indications. If there are no visible objects, or *monuments* as they are called, then the directions and lengths, or the courses and admeasurements of the boundary lines as given in the deed, are to be resorted to, and are to govern in determining the boundary, whether they correspond with the other indications, such as the number of acres mentioned in the deed, etc., or not. If there are no monuments nor admeasurements, then the number of acres, the quantity of land, or any other means which may exist, may be made use of in determining the true extent of the farm. If none of these are given and there are no means of determining the true boundaries of the farm, why, then of course the whole deed must fail for want of certainty.

1. Monuments. These are permanent landmarks established or made use of for the purpose of indicating boundaries. They may consist of natural or artificial objects, streams, stones, stakes, springs, trees, posts, etc. (7 Cow., N. Y., 723.) When these exist they must govern, although they do not correspond with the distances as given in the deed, nor do not include the number of acres mentioned. (2 Mass., 380.) To illustrate: In the descriptions of land as given in deeds it is very common to mention the boundary line as commencing at a certain point and running in a certain direction or along a certain stream a certain distance to another point, as a tree or stone, then in another direction a certain distance to still another point, as a post or corner of a building, then in another direction a certain distance to some other point, as the corner of a street, then in another direction a certain distance to the place of beginning. This is sometimes called a description by *metes and bounds*, and it is customary to mention the number of acres contained in the land. Now if the deed after running the boundary line as above indicated adds this expression: "*containing one hundred acres of land*," and it is found by actual measurement that there are only eighty acres within those boundaries, then only eighty acres will be conveyed. The monuments must govern. (42 Me., 209.) And a deficiency of this sort in the number of acres mentioned in the deed does not give the buyer any remedy against the seller for any return of part of the purchase money, unless, perhaps, the land was bought at a stated price per acre. (19 Pick., 387.) Indeed, of so much less importance is the number of acres mentioned in the deed than the boundaries marked by known monuments, that it has been held that a fraudulent overstatement of the quantity by the seller in order to deceive the buyer will give the latter no redress if the boundaries be truly pointed out in making the trade (102 Mass., 217); but a fraudulent statement as to the *boundaries* would release the purchaser from the sale. (9 N. Y., 183.) So, likewise, if the number of acres are found to be more than those mentioned in the deed; they all pass if included within the boundaries as set forth in the deed. In further illustration of the law that visible monuments must govern, it may be said that if the deed describes the boundary line as running from monument to monument in given directions and distances, and it is found on actual measurement that both the directions and distances are wrong, the monuments must still govern

and the land within them will pass. The reason of this is obvious. Surveys are often loosely made; measurements, especially in uneven or forest lands, are liable to be inaccurate; directions, which are determined by instruments liable to be affected and rendered variable by temperature and electrical conditions, may not always be exactly true, so that it is only sensible and proper that both should be required to give way to known and visible monuments.

A boundary line as given in a deed was said to run *westerly*, but the monuments showed it to be *northwesterly*, and the latter was properly held to be the true line. (22 Cal., 469.) If monuments are referred to in the deed which are not in existence at the time the sale is made, but the parties then go upon the premises and fix those monuments, and the purchaser takes possession, they will then ever after be bound by them, and neither can complain or have the monuments changed, though it may be found that they were not just accurately placed. (7 Cushing, 381.)

2. Courses and Distances. If the land is described in the deed as bounded by a line commencing at a certain point and running, for example, west four degrees and seven minutes north, six chains and ten links to another point, thence south nine degrees and eight minutes west, forty chains to another point, and so on around to the place of beginning, these are called the *courses* and *distances*. And as has been stated, courses and distances govern if there are no visible monuments. (20 Pick., 62.)

3. The Quantity of Land. It is very common to mention in the deed the number of acres or quantity of land which the farm conveyed is said to contain. This is generally regarded only as a part of the description of the land, and it affords only the weakest means of determining the true extent of the farm. As we have seen, it is subordinate in importance to every other means of ascertaining the boundaries. It aids but does not control the description. (5 Mass., 357.) Therefore, it was held in Kentucky that where a grant of land described by metes and bounds as containing 174 acres was found by actual measurement to contain 214 acres that the whole land would pass. (4 Met., Ky., 103.) And a failure in the number of acres does not generally give the grantee any right to fall back upon the grantor for any deficiency unless there is an express covenant as to quantity.

4. Parol Evidence as to Boundaries. The boundaries of a

farm may sometimes be determined by parol or verbal evidence. It is a general maxim in law that parol or spoken testimony is not admissible to contradict or vary the terms of a written instrument. This is true of deeds. Their provisions cannot be set aside or even changed by parol evidence, but they may generally be explained in this manner if explanation is needed. The circumstances under which they were made may always be shown by parol. (20 Ohio, 147.) The meaning of vague or unusual words which may occur in the description clause of the deed, may be thus explained. (15 N. J. Ch., 418.) So may technical terms be explained, and also what are called latent ambiguities. (36 N. H., 569.) For the purpose of determining boundaries parol is admissible to show where monuments were; if they have been lost, or if there are two or more objects which would answer for the monument (as where a deed mentioned a "pine tree" and it was found there were two) parol is admissible to show which was meant. (2 N. H., 369; 22 Cal., 496.) And where the deed leaves the boundaries doubtful, it is proper to show by parol the construction which the parties gave to the language used. (1. Met., 378.)

Boundaries may sometimes be determined by actual occupation, ancient reputation, the admissions of the grantor against his interest, old maps, the lines of adjoining surveys, etc., and by other such considerations too tedious and too technical for full treatment here. (See Greenleaf on Evidence, § 145.)

5. Streams, etc. The general rule regarding monuments is that the boundary line runs to the center of them unless otherwise expressed in the deed. This is generally true of streams, rivers, creeks, and artificial ponds or lakes when these serve as monuments of boundary. At the old English law a farm bounded by a *navigable* stream extended only to high-water mark; but navigable streams were held to be only those in which the tide ebbed and flowed. All others were regarded as not navigable, as such was no doubt in almost all cases the fact in England, and farms along them were held to extend to the middle or thread of the stream. This doctrine has been adopted in America. Farms on streams in which the tide ebbs and flows extend only to the high-water mark. Farms on all other streams, no matter how large, nor whether navigable or not, extend to the middle of the stream—not necessarily to the middle of the water, but the middle or thread of the current. (9 N. H., 461; 17 Mass., 289; 26 Wend., 404; 20 Wis., 432.) This is

the general doctrine in America, and it has been applied to farms along the Mississippi river which are held to extend to the middle of that great stream, subject to the right of navigating its waters by the public. (39 Miss., 109.) It has also been applied to the Detroit river, farms along which are held to extend to the national boundary. (8 Mich., 18.) But there are a few exceptions to this general rule. For instance, it was held that the Mohawk should be regarded as in this sense a navigable stream, and that farms lying along its margins should be bounded by the *low-water* mark. (33 N. Y., 461.) And a similar rule was adopted by the courts of Pennsylvania with respect to the Monongahela and other large rivers of that State. (14 Pa. St., 120.) And also in North Carolina and Tennessee a similar doctrine was announced. (2 Dev., 30; 1 Head., 650.)

The general rule being that farms bordering on fresh water streams extend to the thread of the current, it follows that if an island forms between the margin and the middle of the stream it belongs to the owner of the bordering farm. If the island existed there at the time the farm was sold it would not pass to the grantee for the farm would only extend down to the first thread or *filum aquæ*, that is to the middle of the current between the island and the shore.

6. Artificial Ponds. A similar rule regarding boundaries applies to all artificial bodies of water, as mill-ponds, reservoirs, etc., as to fresh water streams. Farms bounding upon them extend to the center. (13 Me., 198; 9 Gray, 269.) It would seem but natural that if a stream be dammed up so as to turn it into a lake or large pond, that this should not interfere with the boundaries of farms on either side, but that such farms should remain as before extending to the middle of the water.

7. Lakes, etc. But with lakes and large natural ponds the rule seems to be that farm boundaries are at low-water mark (13 Pick., 261), though there are some decisions to the effect that on our small inland lakes and ponds there is no exception to the general rule, and that farms along them extend to the center. This is the rule in Michigan.

8. The Sea. A farm bordering on the ocean or sea, or an arm of the sea, like a bay or strait, extends only to the high-water mark. The space between high and low-water mark, called the shore, belongs to the public. (3 Kent. Com., 431.) This is the law

except in Massachusetts, where by an ancient ordinance farms on the sea-shore extend to low-water mark if that is not over 100 rods from high-water mark. If the owner of one of these Massachusetts farms sells it and describes it in the deed as bounding *on the sea*, the grantee will take the land to the low-water mark; if he describes it as bounded by the *shore* it will extend only to high-water mark. (6 Mass., 435.) While if he uses the expression "to the sea shore," or "to the beach or sea," the grantee takes to the low-water mark.

9. Highways. If a farm is bounded by a public road, street, or alley, it extends to the middle of the way. It is almost the universal doctrine that the land in a highway belongs to the owners of adjacent land. (19 Wend., 659; 16 Mass., 33.) And if a farm is sold and described as bounded by a highway, or lying along a highway, it extends to the middle of the same unless the description clearly excludes the soil of the highway. (27 N. Y., 624; 20 Wis., 432.) If the land is described by lot, which lot fronts on a street, the line will extend to the center of the street, although the plan of the lot and the admeasurements extend only to the edge of the street. (10 C. B., n. s., 400.) The Vermont court held that land described as "bounding south on a highway" extended to the centre of the road (30 Vt., 118), and the Wisconsin court went so far as to hold that in all cases the land will extend to the centre of the road unless the road or street is expressly excluded in the deed. (4 Wis., 331.)

Of course the land in the highway is not of great value to the adjacent farmer, being burdened as it is with the public easement or right of travel there. But every beneficial use to which it can be put, which does not interfere with the public right of passage and of keeping the way in repair, belongs to the adjacent owners, and may be utilized by them. The trees and grass belong to them, and may be cut and carried away; and if valuable mines are there discovered they may be worked. Then, too, if the road were ever discontinued the land in it would revert free of all incumbrances to the adjacent owners. So that it is a matter of much importance where the boundary of a street front really is. The doctrine that farms extend to the centre of the highway is applied to streets which have been dedicated but not yet opened, as well as to those which are open and in use. (2 Wall., U. S., 57.) And it is

applied to streets in New York City (22 How. Prac., 115) and other cities of the Union.

10. Surveys. Where land is deeded according to the survey of it, the original survey is the one that generally must govern. All of the land in this country, outside of the original thirteen colonies, is supposed to have been surveyed by the general government, and permanent monuments fixed to determine the boundaries. And, as has been stated, it is the well settled rule that no matter how erroneous the original survey may have been it must govern; the monuments then established must determine the boundaries, even though the effect be to make one quarter section contain 180 acres, and the adjoining quarter section but 140. Parties buy with reference to these monuments, and are entitled to whatever is within them. (4 Wheat., 444; 93 Ill., 233.) The public lands are divided by the government survey into townships six miles square, and the townships are divided into thirty-six sections containing, as near as may be, 640 acres each.

Where the deed refers to a survey the grantee takes in conformity therewith, though the boundaries mentioned in the deed do not agree with those of the survey. (14 Mass., 149.) So, also, where the deed refers to a certain map or plan, the lines laid down on such map or plan are to be regarded as much a part of the description as they would be if expressly recited in the deed. (17 Mass., 211.)

Where the boundary lines are known, the adjoining proprietors cannot change them by verbal agreement, because it would work a parol transfer of land which would be void under the statute of frauds. (4 Yerg., Tenn., 456.) But if a boundary or dividing line is unknown in dispute or in doubt, it is then proper and admissible for the parties to establish it by parol agreement (4 Wheat., 513), because the law always allows parties to settle their own disputes, and an agreement of this sort respecting boundaries becomes binding upon the parties and upon the land. The peace of the community requires this rule. (26 Mich., 332.)

11. Acquiescence. We see, therefore, from the above, that boundaries may be determined by acquiescence. Where the original line is unknown, and the adjoining owners have accepted a particular line as their boundary, and all parties concerned have acquiesced in it, and have cultivated and claimed up to it, it then becomes

the true boundary. And no particular time is necessary to accomplish this. The boundary so established becomes binding though not acquiesced in for twenty years or any particular number of years. (82 Ill., 498; 43 Mich., 542.)

So, therefore, if on buying a farm the purchaser finds that one or more of its boundaries have been thus settled by acquiescence, he may generally rest assured that the line so established will be held to be the correct one, and that it is needless for him to trouble further about it.

12. Meander Lines. These are lines traced along the shores of lakes, ponds, and rivers for the purpose of ascertaining the quantity of land in a section where the same is made fractional by such waters. It was these lines that determined the price of such sections when they were sold by the government, and for this reason it is perhaps natural to suppose that they form the boundary line, and that the land in front them extending out under the water, remains unsold and still owned by the government. This, as we have seen, is not generally the case. Except where such lines run along the margins of large navigable streams, or those in which the tide ebbs and flows, or along large lakes, they do not mark the boundary, for the boundary is at the middle of the stream. In small lakes which are the mere expansion of the rivers which pass through them, this rule of centre boundary has been applied. (10 Mich., 125.) But questions of great nicety have arisen as to just how the side boundaries of farms or other parcels of land shall be extended from the meandered line to the centre boundary. If the side boundaries were extended straight to the centre line it would work well enough providing the stream were straight; but, if the stream were curving, such a rule would make the side lines cross each other in some cases, and in others have the effect of practically cutting off the river front of some farms and of giving an undue advantage to others. It cannot be, therefore, and has not been recognized in the law. The rule which has been found to work with greatest justness, and which has therefore been approved by the courts and applied in many instances, is this: Extend the side boundaries or dividing lines between the parcels from the meander line to the center of the river as nearly as possible at right angles to the general course of the river at that point. This rule is applied not only to sections and other subdivisions of the government survey, but also to town lots fronting on such bodies of

water as carry the boundary to the centre. (28 Mich., 182.) On a circular body of water this rule would make the lines converge to the centre like the spokes of a wheel. On a very crooked stream or a very irregular body of water, this rule would be incapable of strict application; and it is impossible to explain here, in fact impossible to state with certainty at all, just what would be the legal rights of the riparian owners on one of our irregular inland lakes if it should dry up or be drained away. (See Angell on Water Courses, §55.)

CHAPTER XI.

EASEMENTS.

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Of the many rights incident to real estate, and growing out of the ownership thereof, there are few of greater importance than those which are called, in the language of the law, *Easements*. It is the purpose of this chapter to set forth, as plainly as possible, a brief statement of the law governing them, to the end that the reader, if he be the owner of real property, may understand somewhat his rights in relation thereto.

1. What are Easements. An easement has been defined as a right in the owner of one parcel of land, by reason of such ownership, to use the land of another for some special purpose not inconsistent with a general property in the owner. (2 Washb., Real Prop. 25.)

The right which one owner has in the land of the other is called an *easement*; the burden which is thus imposed upon the property of the second owner is called a *servitude*. Easements and servitudes are then really the same things looked at in two ways. They are *incorporeal hereditaments*, that is, permanent rights in real property, and they are regarded in law the same as real estate, and pass to the owner's heirs or assigns in the same manner. They

always involve the existence of two estates,—the *dominant* estate to which the right belongs, and the *servient* estate upon which the obligation rests. (38 Cal., 116.) A servitude thus resting upon land is an incumbrance, and in deeding such land the owner should mention it or make an exception of it, if he deeds by warranty deed, otherwise he will be liable under his covenant against incumbrances. If one buys a farm by warranty deed and finds it burdened with the obligation of maintaining an easement in favor of an adjoining farm, he may collect of his grantor such damages as that servitude causes him, if it were not excepted out of the covenants in his deed. But if one buys a farm even by quit-claim deed, all the easements which are appurtenant to it will pass to him whether they are mentioned in the deed or not. Easements must not be confused with licenses, though they may both consist of the same thing; for while an easement always implies an interest in the land on or over which it is enjoyed, a license carries no such interest and is generally revokable at will by the owner of the land in which it is enjoyed. (4 Sandf., Ch. 72.)

Easements are of numerous kinds; in fact, it is said, they may be as numerous as the exigencies of domestic convenience and necessity, or the uses to which land may be put. But practically they are not so numerous, and we shall here only consider the more important and universal ones, namely, light, air, water, ways, and support, referring in only a general way to others which may exist.

2. Light. Light and air in many respects resemble each other. They are provisions of nature necessary to the existence and well being of all mankind, and every person has a natural right to use them in any way he may think proper, providing he does not thereby cause damage to other persons. Every person who owns a house or other building has the undoubted right to open as many windows in it as he pleases for the admission of light and air; and if such house or building immediately adjoins another's land, such owner cannot complain that the light flows in from over his property. No legal injury is thereby caused. (13 Wend., 261.) But if such windows interfere with his privacy, or if for any other reason he does not wish to have the right to an uninterrupted flow of light into such windows to be by any means acquired, he may exercise his superior right of building on his own land and thus may shut the light off. But when such a right to an uninterrupted

flow of light is once acquired, he can not interfere with it. It is then an easement which his adjoining neighbor has in his property, and the law will protect it as perfectly as though the neighbor owned the land over which it is enjoyed. At common law, and in England by force of statute also, such a right may be acquired by prescription, or long uninterrupted use. If the windows of one's building have received the light which comes across and over another's land for twenty years or more, an easement has been acquired in that land to have the light continue to flow; and the owner of the land can not erect any buildings or do any act which will intercept the flow. This is the law in England, but it exists there only in favor of "ancient lights" or old windows; so that if one has no buildings with windows on his land, he cannot gain the right by prescription to have the light flow on his land alone or on to anything else that may be there.

In America this easement or right to an uninterrupted flow of light can not be acquired by prescription or long use. In some of the States such a mode of gaining the right has been abrogated by statute, and in others it has been denied by the courts. Notwithstanding some early decisions to the contrary it can not now be safely said that the doctrine that a right to light may be gained by mere prescription prevails in a single State, unless Delaware be an exception. We can not here examine the causes which brought about this change from the old law. Suffice it to say that all things considered, the change was a wise one.

The only way, then, that a right to a flow of light over another's land can be acquired in this country is by grant, that is by buying it and having it properly deeded. If therefore one wishes to build his house right at the edge of his lot, he must either buy the right to an uninterrupted flow of light over the adjoining land, or else take his chances on having the light cut off when his neighbor gets ready to build. But having acquired such a right, his flow of light cannot be interfered with; for if it is obstructed by the adjacent owner, the obstruction may be abated, or damages recovered for the injury. In order, however, to maintain an action for such an injury there must be a substantial privation of light, sufficient to render the occupancy of the house uncomfortable, or to prevent the owner from carrying on his accustomed business. (7 C. and P., 410.) A mere shading of the premises would not entitle the owner to any relief.

The disturbance of one's privacy by the opening of windows overlooking his grounds is not, as has been intimated, an injury which the law will recognize. If one is thus annoyed, his only remedy is to erect a building or wall which will obstruct the view, and this he has a right to do unless he has granted an easement in his lands to the uninterrupted flow of light over them.

At the common law, if one sells a house, the windows of which receive light from over land which he still owns, he cannot obstruct the continued free passage of light to those windows; for he is held to have impliedly granted an easement to that effect, the windows being necessary to the enjoyment of the house. Upon this point the American decisions do not agree. The doctrine is denied in Ohio, and it is not safe to depend upon it being the law anywhere. The proper way to do would be to have the grantor of such a house include in his deed of it the easement of light over the adjoining land.

3. Air. The rules of law relating to the right to free passage of air are practically identical with those relating to light. The right to have it flow into one's windows or blow against one's windmill is, when acquired as against an adjoining owner, an easement. Such an easement cannot, in this country, be acquired by long use or prescription merely. It must be acquired by grant.

4. Purity of Air. Every owner of land has the natural right that the air which passes to his land shall not be polluted by any person, and if any person does pollute or befoul it without having gained the right to do so, he is guilty of a wrongful act. (6 Gray, 473.) Of course one has the right to pollute the air passing from his premises to a certain limited extent, for he could not keep fires in his stoves, or even use the air for breathing, if this were not the case. But, what is meant by the above rule is, that the air, being for the common good of all, may be used by each in any way which does not prevent others from deriving that common benefit, even though such use may render it a little less pure than it otherwise might have been.

A right may be acquired to pollute the air which passes from the land of one owner to that of another, and such a right is an easement. An easement of this character may be acquired by prescription or by grant. When the air, which passes from the premises of one person to those of another, has been habitually polluted by smoke, smells, noises, vapors, water, etc., continuously

for a period of twenty years or more, the right has probably been acquired in favor of the first owner and against the second to continue such pollution. (4 Bing., N. C., 138.) This is an acquirement of the easement by prescription. It may be acquired by grant, and a grant will, under certain circumstances, be implied. For instance, if I sell a glue factory, the odors from which flow over my remaining land, I am held to impliedly grant to my purchaser the right to have such odors continue to flow as they did when I owned it. (5 Met., 8.)

After one has acquired the right to pollute the air in a certain vicinity he may be compelled to cease to do so, or to move on, if by reason of the increase of population near by it becomes deleterious to the public health.

5. Water. In respect to the rights which the owner of lands abutting on a stream of water, or through which a stream passes, a distinction is made as to whether the stream is a natural or an artificial one. A natural stream or *water-course* is one which arises at its source from natural causes and flows in a natural and well-defined channel. An artificial stream is one that arises by the agency of man, or if arising from natural causes, flows through a channel made by man. In natural streams all persons owning land upon them have certain natural rights as below described. In artificial streams no such rights exist. Similar ones may be acquired in them, and when acquired they are easements. Natural rights in natural streams cannot be interfered with without liability, unless a right has been acquired to do so. Such a right is an easement.

6. Water Rights. These are called *Riparian* rights. Land bordering on natural streams is called *riparian* land, and the owners of it *riparian* owners. Every riparian proprietor has the right (unless he has lost it) to have the water continue to flow in his stream as it would do by nature.

First, he has the right to have it continue to come down from above without marked diminution or appreciable increase in volume. The owner above can, of course, make such reasonable use of the water as his domestic necessities may require, and he can increase it by the drainage of surface waters from his farm; but further than that he cannot go unless he has acquired the right to do so.

In the second place, a riparian owner has the right to have the water flow down in its naturally pure condition without being in

any way polluted or befouled, and also to flow in its natural channel without being diverted from its course.

In the third place, a riparian owner has the right to such reasonable use of the water as his domestic necessities and convenience may require. That is to say, he may use it for watering his stock, supplying his household, irrigating his land, turning his water-wheels (see Chapter XI for limitations on this), and for any other purpose which will not interfere with his neighbor's rights below.

Lastly, a riparian owner has the right to have the water flow down the stream below him in its natural manner and in its natural channel without being impeded or set back by the lower owner. These are his natural rights. If the owner above or below has acquired the right to interfere with any of them, such right, if permanent, is an easement.

Easements of this kind may be acquired by prescription or by grant.

If a riparian owner has for a period of twenty years or more, continuously and under a claim of right, dammed the water of his stream back upon the land of his neighbor above, or if for a like period and under like circumstances, has turned the refuse of his dye-house into it, or has otherwise polluted it so as to render it unfit for the domestic use of his lower neighbor, or has used all the water of the stream, or has diverted it from its natural course and turned it on to his neighbor below in a different place from where it would naturally enter, if he has done any of these things, or anything else of a similar nature, for such a period, adversely, and under claim of right, then he has gained by prescription an easement in the stream, and he may continue such use of it, and the right passes to whoever becomes the owner of his land.

As to surface waters the rules of law are quite different. These may be defined as being all waters not contained in natural water-courses, that is—all that falls as rain or comes from melting snows, all that oozes from the ground but does not flow away in a natural channel, all that comes from the eaves and all that may be conducted on to one's premises by artificial means. These belong absolutely to the owner of the land on which they happen to be. No one else has any rights in them, and the owner must take care of them as he does of his other property. He must dispose of them on his own premises, for he cannot collect them in drains and turn them upon his neighbor's land, unless he has gained the right to

do so, and such a right would be generally an easement. He cannot even allow his eaves to drip on another's land unless he has gained the right to do so either by grant or prescription. (101 Mass. 539.) Nor has he any right to surface waters on adjoining land which percolate through the soil and so supply his wells, etc. His neighbors have the right to drain their lands, though the effect may be to make his wells go dry. (62 Me., 175.) The matter of water rights and drainage is one of too great importance to be fully considered here. The reader is referred to the chapter next following.

7. Ways. A very important class of easements, known as *rights of way*, are the rights which land owners have, in some cases, of passing over other persons' land for the purpose of getting to or from their own premises. Where the owner of a piece of land has the right by reason of such ownership of crossing the land of an adjoining owner, he has an easement in such land which passes to whoever succeeds him in the ownership of his land.

Where a person who is not the owner of real estate has the right to pass over another's land, or where he possesses such a right not because of his ownership in adjoining land, such right is called an *easement in gross*. This is very like a regular easement, except that it cannot be sold or assigned by the owner, and does not pass to his heir.

Highways are in this last sense *public easements*, the rights of the public in them being very similar to the rights of owners of private easements of way.

Rights of way are public and private. The former include highways and are treated of in Chapter XIII. The latter include foot ways, carriage ways, and drift ways. The grant of *a way*, without specifying what kind of a way, has been held to mean a way for all purposes. (Com. 114.) The grant of a "carriage way" was held to include the right to use the way for foot travel; but a foot-way cannot be used as a carriage way, nor can a drift way (which is a way for driving cattle) be used as a carriage way though it may be used for the passage of teams. (41 Me., 320.)

How Ways are Acquired. Easements of way over land may be created by express grant, that is by being purchased and deeded like any other interest in real estate; or they may be acquired by prescription or long adverse use, which in theory supposes an ancient grant which has been lost; or they may be created by *necessity*.

8. Ways of Necessity. A way of necessity arises where one sells land to which there is no other means of access except over land which he still owns. For example: If I sell the back part of my farm and there is no way of getting to it without going over the land of a stranger, except by crossing the front part, a way of necessity arises in favor of my grantee; he has, by reason of that fact, an easement of way over the land which I reserve. (22 Pick., 102.)

As to what degree of necessity will create a right of way the rule is that it must be *absolute*. There must be no other possible legal way by which the grantee can get to his land. Consequently where a man sold land which was surrounded on all sides by water except the side which he reserved, and there was no means of access to it by land except over the grantor's land, it was held that such a necessity would not create a right of way over the grantor's land. The grantee could get to it by water. (3 McCord, 131.) Convenience is not the test; there must be an absolute necessity. (27 Verm., 460.) The same rule applies, as to ways of necessity, if you sell the front part of your farm, reserving the rear portion, to which there is no means of access except over the part which you have sold. You are held to have retained the right to cross such land, though your deed said nothing about it, but on the contrary said the land was free and unincumbered. (4 Gray, 297.)

A right of way is a right to pass over another's land in a particular line. A right to pass over in any direction or all directions is not an easement, and cannot be acquired by prescription. (11 Gray, 246.)

When a right of way is created by necessity the person over whose land it passes must designate the line on which it shall run, as soon as requested by the owner of the way. And he must do so in a fair and reasonable manner, though he may pick out such a line as will least inconvenience himself. (24 Barb., 44.) If he does not do so on being requested, the owner of the right may select a suitable route for the way, and having once selected it he cannot make a change. (24 Pick., 102.)

A way of necessity terminates as soon as the necessity which occasioned it is removed. (18 Conn., 321.) Consequently where one owned a mill to which there was a private way over another's land which was used as a way of necessity, and the highway com-

missioners after a time opened a public road by the mill which gave free access thereto, it was held that the private way was thereby terminated. (47 N. H., 230.)

9. Ways by Immemorial Use. Rights of way may be created by prescription, that is by continuous, adverse use for twenty years or more. The use must have been continuous, not necessarily every minute of the time, but practically continuous according to the circumstances of the case, and without any abandonment or entire interruption for twenty years or more. It is not necessary that the use be by the same man during the whole period. If successive owners of the land so use it for that period the right will accrue. (2 Allen, 277.) The use must have been open, notorious, peaceable, without license, and it must have been *adverse* or against the owner's interests and without his permission (24 Pick., 106.) If it were secretly or covertly used, so that the owner could not know about it, no right would accrue; or if it were forcibly used, or against the owner's protests (11 Gray, 148) it would avail nothing, no matter how long used. Likewise if used by permission, as for a rent paid, nothing would be gained. (13 N. H., 360.) And the use must be always under a claim of right. So important is this that the New York court said: "A single lisp of acknowledgment by the defendant that he claims no title, fastens a character upon his possession which makes it unavailable for ages." (17 Wend., 564.) And if it complies with all the above conditions the use must have been of a way in some regular and defined line. No right can be acquired by prescription to wander over a man's farm in any manner or direction that the party's whim or convenience may suggest. That can give no rights at all. (5 Pick., 485.)

10. Ways by Purchase. Rights of way may lastly be acquired by grant or purchase. In order to gain a permanent right by this method the grant must be by a regular deed, duly executed, signed, sealed, delivered, etc., with all the formalities required in a deed of land. An easement being an interest in real estate cannot be created or transferred by mere oral agreement. If the right were given only verbally, though duly paid for, it would amount to only a license, subject to be revoked. (2 Allen, 578.)

Where a right of way is given by grant, and the deed does not specify the location of the way or the line on which it shall run, the selection of the line is then left to the grantee or owner of the

way; and it is his duty to make such a selection as will be of least detriment to the owner of the land over which it goes. (3 Burge Col. and F. Law, 441.)

11. How Ways may be Used. If the farmer finds that his neighbor has a right of way across his farm, or if he thinks of selling such a right, or of buying one across his neighbor's farm, it is important to know to just what uses such a way may be put. And first, it is to be observed, that if the way was granted for any special purpose it cannot be used for any other purpose. (31 N. Y., 366.) Thus the grant of a way "on foot for horses, cattle and sheep," does not authorize the use of it for carrying manure in a wheel barrow. (1 Q. B., 792.) The grant of a way "for agricultural purposes" does not include the right to draw coals over it nor to transport lime from a quarry. (Holt, N. P., 455.) But where a general right of way is granted, or acquired by any other means, it gives the right *to use the surface of the soil on a particular line for the purpose of passing and repassing, in an orderly and reasonable manner, by any proper and customary method, and also the right to properly fit the soil for such purpose, by leveling, grading, graveling, etc., or such other means as the necessities of reasonable use may require.* (2 Met., 457.) The owner of the way may, of course, keep it in repair; but he can do nothing more than this. He does not own, and of course cannot take away any of the soil, stones, etc., that may be lying in the way (9 Allen, 164), though he may use them for preparing or repairing it. (44 N. H., 539.) It is usually the duty of the owner of the way to keep it in repair (12 Mass., 65), but the owner of the soil may use the way, and may agree by covenant to keep it in repair, or he may be bound by the terms of his deed or by prescription to do so. (12 Mass., 65.)

The owner of the land over which the way passes is entitled to every reasonable use to which the way or the soil under it may be put, which does not interfere with the right of passage and repair which belongs to the owner of the way. (24 Pick., 71.) He may maintain a fence or fences across the way if he sees fit to, provided he places suitable bars or gates for the convenience of the owners of the way (31 N. Y., 366), and the owner of the way must open and close the same unless an open way was expressly granted. (44 N. H., 339.) He may even put a building over and across the way if he leaves an archway through it large enough

to admit of the free passage of its owner with any reasonable load of materials that he may have need to carry. (2 Met., 457.) He may sink a drain under it, whether it be a private or public way, provided he does not interfere with the easement (6 Mass., 454); and he may maintain trespass against any one who injures it or trespasses upon it. (8 Allen, 467.)

If the way gets out of repair so as to become impassable, the owner of the way has no right to travel outside of the limits of the way in order to get around the impaired part. His business is to fix the way so that he can use that instead of going on to other land. (31 N. Y., 372.) In this respect a different rule applies to public ways. If they become impassable the public has the right to enter upon adjacent land in order to get around the barrier. (44 N. H., 631.) But they must occasion no unnecessary injury to such adjacent land in so doing. (7 Barb., 309.) If the owner of the land unlawfully obstructs a private way the owner of the way may then pass over adjacent land to avoid the obstruction (53 Me., 162), though a New York court held that an obstruction so placed there would give the owner of the way no right to deviate from the way, his remedy being either to abate the nuisance or to bring an action for damages. (7 Barb., 309.)

As to how wide a right of way should be, the rule is that if the matter is not settled in the grant, by having the way specifically defined, the way need only be such as is necessary and convenient for the purposes for which it was granted. If the grantee has been using a very broad way, the grantor or owner of the soil may narrow it, or put buildings upon it, so long as he leaves it of sufficient width for the grantee's legitimate use. (2 Pick., 291.)

If a dominant estate, to which a right of way is appurtenant, is divided, the owner of each part has the right to the use of the way. (15 Minn., 142.) Thus if I, as owner of my farm in Utopia, have the right to pass to and from it over my neighbor's land, and I leave the farm to my two sons or sell it to two men or a dozen men, each will have the right to the use of the way. This might work quite a hardship if I were to divide my farm into a great many small lots and sell them to as many different men, each with large families. What was originally supposed to be a way for my individual use might become really a thoroughfare over which hundreds of people have the right to travel; but such is undoubtedly the law. (1 Cush., 285.) But this rarely occurs.

12. Obstruction of Ways. If a way is obstructed unlawfully by the owner of the land over which it runs, the owner of the way may remove the obstruction if he chooses and can do so peaceably, or he may sue the owner of the land for the damages caused by the obstruction, and if the owner persists in obstructing, he may get a perpetual injunction restraining him from interfering with the way. If any stranger obstructs the way, it is a trespass; and he may be proceeded against accordingly by either the owner of the way or the owner of the land.

13. Termination of Ways. Rights of way may be terminated in several ways. A way of necessity ceases or the right to it terminates, as we have seen, the moment the necessity which occasioned it disappears. (47 N. H., 230.) If the necessity return it is doubtful if the way would revive. Probably it would not. (9 Gray, 421.)

The union of the two estates in the same proprietor destroys all easements. (108 Mass., 202.) That is to say, if the owner of the right of way should become the owner of the land over which the land passes, the way would cease to be an easement, but would become an ordinary property right. The subsequent sale of either of the estates would not revive the easement. (16 Gray, 471.)

Abandonment of the way will work an extinguishment of the right under many circumstances. If the owner of the way declares that he abandons it, that ends his rights; and if he ceases to use it that may have the same effect. Mere failure to use a right of way which has been acquired by grant will not, however, of itself amount to an abandonment, unless there was an adverse enjoyment of it by the owner of the land over which it ran. (112 Mass., 231.)

A right of way may terminate by agreement of the parties, that is by formal release of the right.

14. Lateral Support. Every land owner has the right to have his land supported in its natural position by the adjoining land of his neighbors. This is a natural right; and if any one of the neighbors removes this natural support by digging away the adjacent land, or by making excavations near the line so that the land is allowed to fall from its natural position, such neighbor becomes liable for the damage so done. (122 Mass., 199.)

But this right to support afforded by adjacent land extends only to the land which is supported, and does not include the right to

have any buildings, or other weighty improvements, which the owner may place thereon, supported also. So that should the support be wrongfully removed and the land fall from its natural position, damages could be recovered only for the injury to the land, and nothing could be recovered for the injury to any building that might be on it. That is to say, the natural right of lateral support extending only to the land supported, a man cannot add to his natural right, or increase his neighbor's burden, by placing buildings or other weighty objects near the line. Of course he can place them there if he sees fit, but if they fall when his neighbor removes the lateral support, he can not recover any damages for them. If one is not content to enjoy his land in its natural condition, but wishes to put large or heavy buildings directly upon the edge of it, he must either make an agreement with his neighbor to have them supported laterally, or else lay his foundations so deep or take such other precautions as will insure their safety, no matter what excavations his neighbor may afterwards make on his own land in the exercise of his rights.

But it is said that a right or easement to this additional lateral support which a building near the line may require from adjacent land, can be acquired by prescription or uninterrupted use for twenty years or more. So that if a building has so stood for twenty years, the adjoining land has become burdened not only with the lateral support of the land, but of the building also. Such is the English rule, and such is the doctrine laid down by American text writers. But it is doubtful now whether such is the law in this country, and it would at any rate be safest if one wishes such an easement to get it by purchase from his neighbor. (49 Ga., 19.)

Subjacent Support. What has been said regarding adjacent support is true also of subjacent support, or the support which land receives from the rocks and other minerals underneath it. The owner of land has the right to have it supported in its natural position by that which lies below, so that if one man owns the surface and another the subsoil or the mines underneath, the latter cannot remove the support naturally afforded by his land to that above it without rendering himself liable for the injury caused. (66 Penn. St., 430; 80 Id., 81.)

If, therefore, the farmer sells the coal mines that may underlie his farm, the purchaser must see to it that in excavating for and removing the coal he does not disturb the support to the land above.



He may change the natural support, and substitute artificial props, piers, arches, or the like; but they must be permanent and substantial, and must furnish the same absolute support that the natural substrata did. (Bell v. Reed, 31 Legal Int., 389.)

But this right of subjacent support like the right of lateral support, extends only to the land supported, and does not include the right to have buildings so supported unless such additional right has been specially acquired in some way. This is perhaps the best way that the law of the subject can be stated generally. There are some exceptions to it. For instance, an implied right to support arises in favor of any buildings that may be standing upon the land at the time the subsoil is granted. (2 Allen, 131; 122 Mass., 199.)

15. Water as a Support. Where underground waters afford the support for overlying land, the owner of such land has no natural right to the support so afforded, and if the subsoil is owned by another party he can drain that water off, though it cause the land to subside somewhat. (38 L. J. Exch., 126.) But if these underground waters support surface waters which lie in a defined body or stream, then they cannot be removed without liability. (L. R., 6 Ch. App., 483.)

When any right of support, which does not exist as a natural right, is acquired by any means, it is an easement. So when a right is acquired to interfere with any natural right of support, such right is an easement.

Easements of support are acquired by grant and by prescription. Grants of easements of this sort are often implied. If the farmer sells his farm, reserving the mines underneath it, he impliedly sells the right to support of that farm and the buildings standing upon it at the time, but not to any additional buildings that may be put upon it. Likewise if he sells the mines under his farm he impliedly reserves similar rights of support. (66 Penn. St., 429.) If anything further than or different from this is desired it must be expressly granted or reserved in the deed.

16. Mining Leases. These are grants generally for the express purpose of removing the subjacent soil, and it is customary to specify in them the respective rights of the parties in regard to the removal of support from the surface soil. But it seems that if there is nothing said upon this point that there is in the case of these leases an exception to the general rule that the surface must

be supported, and that the lessee in the absence of any agreement to do so is under no obligation to leave any support whatever for the surface soil. (Goddard on Easements, 223.)

17. Side Support for Houses. The owner of a house may acquire the right by grant or prescription of having it supported by an adjoining house, and this right is an easement. If a man builds two or more houses together, constructed in such a manner that each requires the support of the other, and then sells one of them, or sells them to different parties, a right to have this mutual support continue becomes incident to the property; the law presumes a grant of this easement in favor of each house. (15 N. Y., 611.)

The owner of such a house cannot remove it or tear it down without shoring up the other building, or otherwise replacing the support which his building afforded.

But no easement of support arises as in favor of one building against another because the two happen to be standing in juxtaposition, no matter how long. Nor does it arise if one building totters over and leans against another which stands erect. (5 Rich., 311.) Notwithstanding this one should not recklessly or negligently take down his own building in a way to cause injury to his adjoining neighbor. He must be careful how he does such work, and must give his neighbor notice of what he intends to do, so that such neighbor may have opportunity to protect his premises by props and guards, otherwise he may be liable for the injury caused. (22 Mo., 566.)

18. Party Walls. These are walls built on the line between two adjoining owners, and are generally owned jointly by the two proprietors and are for their common use. Party walls usually come into existence by the mutual agreement of the parties, or under the operation of local statutes which have been enacted in many of the States regulating this matter. These statutes sometimes provide that where one wishes to build on a city lot, for instance, he may build the wall half on the adjoining lot, and when his adjoining neighbor gets ready to build he may make use of half the wall by paying half its cost. If one owner builds two houses or stores with a common wall between them, and then sells one of the buildings, the wall becomes a party wall. It may be said that whenever two buildings stand together with only one wall between them into which they are both built, and from which

they both receive support, such wall is presumed to be a party wall, and the rights accruing from such a wall will appertain to it unless there is some clear showing to the contrary. (4 Johns, Ch. 334.) And when such a wall needs repairing or rebuilding, it is the duty of each party to contribute an equal share of the expense. (15 N. Y., 601.)

19. Rights in Party Walls. When a party wall once gets into existence the following are as near as can be stated the respective rights of the parties in it: Each party has the right to the support of his building, the joists, roof, etc., on the party wall; and this right continues as long as the wall remains sufficient for that purpose or the building continues to need such support. If one of the buildings becomes dilapidated, and to repair it necessitates a tearing down of the party wall, the owner may, after reasonable notice to the other party, take down the party wall and erect a new one in its place which will provide the same or better support than the old one. And if he takes no unreasonable time in doing this and uses due skill and care, he is not responsible for the injury he may have caused the other party by reason of his building being exposed to the weather, or his loss of rent or intermission of business. But if the house is not dilapidated or the party wall needs no repair, the owner simply wishing to build his part higher or make other additions to it, then he must do so at his peril and be liable for any injury he causes the other party. (15 N. Y., 601.)

20. Miscellaneous Easements. Though the above are practically the only easements commonly met with, many others may exist, and some are clearly recognized. Still the law will scrutinize any novel right of this sort which may be granted by a land owner, and will not attach to it all the incidents of an easement, so that it will become binding on his heirs and assigns forever, unless it seems clearly proper and best that this should be done. The policy of the law is decidedly and properly against allowing novel modes of holding real estate, or of permitting fanciful interests in lands to be created.

Of course, a grant of any sort of an interest of this nature is perfectly valid and binding as against the grantor and between the original parties to it; but it is doubtful whether it would partake of the full nature of an easement so as to become binding on subsequent holders of the grantor's land, or to pass to the heirs or assigns of the grantee.

Among the few other rights which the courts have adjudicated to be easements are that of piling logs and lumber on land for the accommodation of a mill; the right of floating logs in a private stream (24 Mich., 284), which right is given to lumbermen by statute in Michigan and other lumbering States; and also the right to lay gas pipes through another's land (38 Mich., 154), which is similar to the right to lay and maintain a drain there.

CHAPTER XII.

OF WATER RIGHTS AND DRAINAGE.

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| 1. Conditions in which Water Exists. | 8. Artificial Water-Courses. |
| 2. Brief Statement of General Rule. | 9. Public Drains, etc. |
| 3. Streams or Natural Water-Courses. | 10. Surface Waters. |
| 4. Rights in a Water-Course. | 11. Underground Waters. |
| 5. Use of Water for Running Mills. | 12. Right to Eaves Drip. |
| 6. Acquirement of Mill Privileges. | 13. Right of Passage in Streams. |
| 7. Use of Water for Irrigation. | |

The matter of the rights and duties of a land owner, in connection with the water that may flow through or be upon his land, is one of such importance that in addition to what was stated upon the subject in the chapter on Easements, it seems well to give the following review here in a chapter by itself:

1. Conditions in which water exists. With respect to the condition it may be in, water will be found to exist in three forms, namely, as running streams, surface waters, and underground waters; and the rights of a land owner therein will be found to depend largely upon which of these conditions the water may be in.

2. Brief Statement of General Rule. Briefly stated a land owner has the right to have a running stream or natural water-course remain as nature made it, without being interfered with by the owners above or below him. Surface waters, like the soil of his land, are his, and he may do as he pleases with them; but he has no right to drain them upon another's land, while the waters under the earth follow one or the other of the above rules according to whether or not they are known to exist there as well-defined underground currents.

It becomes necessary, therefore, to define, with accuracy, these different conditions in which water may exist.

3. Streams or Natural Water-Courses. A natural water-course is a *stream* of water flowing in a defined channel, and having well-defined banks or sides, and discharging itself into some other body of water. (9 Cush., 171; 26 Penn. St., 407.) Its size is unimportant. It makes no difference how small it is, nor is it necessary that its flow be constant. But it must be something more than mere surface drainage over the face of a tract of land, or a flow of water occasioned solely by some extraordinary cause, as the melting of an unusual fall of snow or a very heavy shower. All creeks, brooks, rivers, and streams having a continual flow are *water-courses*; but swales, marshes, ponds, and stagnant pools are not. Where water rose from a spring and ran off for a few rods in a well-defined channel, and then came to marshy ground where it spread out considerably, but still flowed sluggishly in a depression, but not with sufficient current to break down the grass till it reached another's land, who had a watering place in it for his cattle, which was supplied by this water, the court said it was a *water-course*, and that the upper proprietor had no right to stop its flow. (11 Cush., 195.)

4. Rights in a Water-Course. The owner of land, through which a water-course flows, has the right to have it continue to flow substantially as it would do by nature, without being unreasonably diminished or befouled by the owner above him, or set back by the owner below him. He has the right to put it to all reasonable and proper uses for domestic purposes, watering his cattle, or supplying power to his mill, his use in all these respects being limited to what is *reasonable*. (50 Me., 604.) As to what is a reasonable use will depend upon the circumstances of each particular case. No general rule can be laid down for all cases. Any use which prevents the lower proprietor from making a reasonable use of the water will be unreasonable. If the stream were a very small one it would be unreasonable, and hence unlawful, to throw the refuse of a dye-house into it so as to pollute the waters as they flow down. (1 Washburn on Easements, 288.) On the other hand, if the stream were larger this might be a proper use. (44 N. H., 584.)

On very small streams or in times of drouth, the rule seems to

be that each proprietor may use what water is necessary for those absolutely necessary purposes, such as supplying his household and watering his cattle. He may do this even though it takes all the water in the stream. But he cannot use any aside from what these natural wants require if it diminishes the water to the detriment of those below. (3 Scamm., 492.) He cannot, under such circumstances, use the water for irrigating or manufacturing purposes. Such is the rule laid down in Illinois, followed in California, and affirmed in Texas and Pennsylvania. (31 Texas, 335; 68 Penn., 123.)

If the upper proprietor put the stream to unreasonable use, divert it, befoul it, or diminish it, except in the case above stated, he is liable to an action for the damage occasioned, or to an injunction restraining him from continuing it.

As one has the right to have the water flow down to him in its natural state from the upper proprietor, so he has the right to have it continue on its course, and to flow down unobstructed on to the proprietor below. Consequently, the lower owner cannot dam it back without becoming liable for the injury. (3 Verm., 308.)

Of course, if the stream below becomes clogged or obstructed by natural causes, as by a deposit of leaves, and the water sets back upon one's land, he has no remedy but to clear the stream, and he has an implied license to enter and do this, and such obstructions may be left on the bank of the stream. (21 Pick., 341.) These are the *natural* rights that the land owner has in the stream passing through his land. He may acquire others or lose these by grant or adverse use. When so acquired or lost they become easements, as was explained in the chapter on that subject.

5. Use of Water for Mills. We have seen in the preceding section that one may use the force of water flowing through his land for the purpose of propelling his machinery. The same general rules apply in this case as in those above indicated. The mill owner may put a dam across the stream for the purpose of getting a head of water, but he must not thereby back the water on to his upper neighbor's land without permission; nor can he unreasonably interrupt the flow of water on to his neighbor below. A right to do both of these things may be acquired by long use. In most States at least twenty years, or it may be acquired by purchase. In the latter case it must be conveyed by deed, as it amounts to an interest in land. If such a right be granted orally it amounts to a mere license, revocable at the pleasure of the giver.

If the stream will only supply the natural wants of those living along its course, no one of them can apply it to any artificial purpose, as the turning of a mill.

An important question often arises as to whether the first occupant of a mill site gains any rights by reason of such priority, which would prevent others above him from erecting dams across the stream. Though there is conflict of opinion, the general doctrine is, that such prior occupancy gives no rights. Mill owners have no rights beyond those of any other owners along the stream. That is, their rights to use the water are to be measured by the same rule of reasonableness as applies to other persons. While a mill owner has the right to flow his own lands up to the line of his neighbor, he must, in constructing his dam, take into account the annual floods or freshets which may occur in the stream, and must see to it that these floods or freshets do not raise the water above such line. But this extends only to those periodical freshets which he can anticipate, and not to any unusual or extraordinary flood, or breaking away of an upper dam. (9 Watts, 119.)

6. Acquirement of Mill Privileges. The right to set the waters of a stream back upon the lands of an upper proprietor may be acquired by adverse enjoyment for a term of twenty years or such period as is prescribed by the statute of limitations of the State wherein the mill privileges are situated. By a continuous and uninterrupted use for such period the mill owner acquires an easement or right to obstruct such stream to the extent to which it has been enjoyed. (102 Mass., 454.)

Such a right may also be acquired by purchase, as above indicated, and where parties cannot agree for the purchase of such a right, or where owners refuse to sell such a right, there are statutes providing for taking of the land for mill privileges under the right of eminent domain. These statutes are similar to those which provide for the taking of land for railways or other public uses. It must be made to appear that the proposed mill is in some sense a public necessity, otherwise these statutes will not apply. Such statutes are always strictly construed, and must be followed to the letter.

7. Use of Water for Irrigation. The use of water for irrigating lands comes within the class of artificial, rather than natural, uses; and whether or not a man can divert the waters of his stream for this purpose, depends upon whether it will deprive lower proprietors of reasonable use of the water in its natural channel. If

it does interfere with such reasonable use, it cannot be taken for such purpose. As to what is a reasonable use depends upon the circumstances, and is to be determined by a jury. (11 Cush., 191; 12 Wend., 330.)

8. Rights in Artificial Water-Courses. The streams thus far spoken of have been such as exist by nature; but with respect to streams that are artificial in their construction the rules above laid down do not apply. Artificial streams generally belong entirely to the person who makes them. For example: Suppose my farm has no natural drainage outlet. I obtain from my neighbor who owns the land between mine and the river the right to put a drain or artificial water-course through his land. Such drain when constructed is mine. My neighbor has none of the rights in it that he would have were it a natural water-course. I may stop the water whenever I please, or flow it down at intervals, or roil it, or befoul it, and he cannot complain, so long as I do not commit a nuisance or violate the terms of the agreement under which the drain was constructed.

9. Public Drains, Town and County Ditches, etc. We have seen that there is no natural right on the part of a land owner to drain his lands upon or across the lands of an adjoining owner. If there is no natural outlet for his drainage he must, if he desires to drain his land, procure from the owner of land intervening between his and the natural water way the right to make one. It may happen that this cannot be done. The parties may not be able to agree; or it may happen that there is a large tract of low land belonging to several owners, which has no good natural drainage outlet, or there may exist large swamps and low marshy places which for the health of the community should be drained. For the purpose of supplying these necessities there are in most of the States *public drain laws*, by virtue of which large artificial water-courses are constructed at public expense. The benefits which have been derived from the operation of these laws can hardly be estimated. In Michigan alone many thousands of acres of her best lands have been thus reclaimed from a nearly worthless condition of low-land or swamp. The details of these statutes, of course, cannot be given in this treatise. In brief, they provide for the appointment or election of an officer called a "Drain Commissioner," who has the general supervision of the construction of public drains. When it is desired to construct a public drain,

any five or more freeholders residing or owning land along its proposed course, may make application to the commissioner, who proceeds at once to examine the line of the proposed drain. If in his opinion it is necessary for the public good that the application be granted, he proceeds to carry out the provisions of the law for the construction of the drain. The reader who is interested in this subject should study carefully the statutory provisions of his State relating to it.*

10. Rights in Surface Water. By surface water is meant not only that which comes from falling rains and melting snows, but also that which oozes out of the ground from springs or marshy places and finds its way over the surface. If it becomes collected into a defined stream with a bed and banks, it loses its character as surface water; but until it does so, it belongs absolutely to the owner of the soil, and he may do with it what he pleases.

If surface waters naturally find their way, by percolation, upon the lower lands of adjacent owners, such owners may prevent such flow by raising their lands or by building dykes, without liability. Or, if one, by raising his land, causes the surface water to settle upon adjacent lands in a manner differently from what it originally did, he is not liable for the injury resulting; in other words, there is no principle which will prevent the owner of land from filling up the wet and marshy places upon it, though such filling may put an end to its being the receptacle of the surface waters of adjacent lands, or may cause the waters that fall upon it to find their way upon such adjacent lands. (29 N. Y., 467.)

But surface waters cannot be collected into a drain and turned upon a lower proprietor without liability. If it is necessary to do so, permission must be obtained from such proprietor to run the drain through his premises, and such permission should be given in writing duly signed and sealed, in which case it will be an easement. If such proprietor refuses to give such an easement the only recourse is a petition to the drain commissioners or proper

*The Michigan statute relating to public drains constitutes chapter 40 of Howell's Statutes, commencing at page 474. The State of Michigan has published for distribution to officials a book relating to the duties of township officers by Judge Green of Bay City. In this book the duties of Drain Commissioners are very amply set forth. Every such official should carefully study it. The book may be got from the county clerk, and should be in the office of every township clerk.

officials for the establishment of a public drain as heretofore set forth.

11. Rights in Underground Waters. In underground waters the law does not seem to recognize any rights unless they flow in a well-known and well defined channel. (43 N. H., 573.) Consequently, if in digging a well upon your land you tap the veins which supply your neighbor's well, or cut off the supply of all the wells in the community, you are not liable for the injury. (18 Pick., 117.)

12. Rights to Eaves Drip. A land owner has no right to so erect a building as that the drip from its eaves will fall upon his neighbor's land, though it seems that he may acquire the right by prescription, or by grant or license. The right to have water drop from a roof upon another's land does not include the right to collect such water in a spout or gutter and discharge it upon such other's land; and it seems that one has no right to discharge his eaves drip so near the boundary line that it will flow into his neighbor's cellar. (15 Barb., 96.)

13. The Right of Passage on Streams. At the English common law streams in which the tide ebbs and flows were regarded as public, and the public had the right to navigate them. In this country any stream which is capable of being put to practical use for purposes of navigation is regarded as so far public, that it may be used for that purpose. (8 Mich., 18.) Thus logs may be floated on any stream which will carry them. (42 Maine, 150.) This rule extends only to streams which in their natural state are capable of valuable floatage, but not to those which may be so used only during floods or by artificial means. (28 Ind., 270.)

CHAPTER XIII.

OF RIGHTS IN THE ROAD.

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| 1. What is a Highway? | 14. Misconduct in the Road. |
| 2. How Roads may be Used. | 15. Obstructions and Nuisances. |
| 3. Travel with Teams. | 16. Abatement of Nuisances. |
| 4. Which way to Turn. | 17. How Roads are Made. |
| 5. Crossing a Road. | 18. By Legislative Authority. |
| 6. As to Passing. | 19. Right of Eminent Domain. |
| 7. Horseback Riders. | 20. By Dedication. |
| 8. Foot Passengers. | 21. By Prescription. |
| 9. Rate of Speed. | 22. Repair and Maintenance of Roads. |
| 10. Vehicles must be Roadworthy. | 23. Liability for Failure to Repair. |
| 11. Stopping by the Roadside. | 24. Discontinuance of Highways. |
| 12. Leaving Horses Untied. | |
| 13. Fractious Horses. | |

The farmer makes so much and such constant use of the highways leading to and from his farm that it seems proper to consider his rights and duties in them here in connection with rights upon his own land, rather than defer the subject to the latter part of this book where personal rights and liabilities are considered.

1. What is a Highway? A highway is defined as a road which every citizen has the right to use (16 Mass., 33), and the term is applied not only to ordinary streets and roads, but also to toll roads, railroads, canals, and navigable streams. In this chapter, however, the law of the subject will be considered with reference only to our ordinary public roads, first setting forth what should be the proper conduct of persons using them, and then touching upon the matter of their construction, maintenance, and the ways in which they may be discontinued.

2. How Roads may be Used. Roads may be used by all per-

sons for the purposes of travel, in an orderly and proper manner, either on foot or by any reasonable mode of conveyance. Generally stated, the law gives to the public the right to pass and repass through the highway in an orderly manner, and to keep the way in repair. Of country roads this statement of the law is perhaps strictly true. The public has no other right in them, save that of travel and repair; but in the streets of cities and villages the public has somewhat larger rights. Under proper municipal authority the public may put such streets to other uses besides those of travel, uses which are necessary for the comfort, health, and prosperity of the community, like the laying of water mains, gas pipes, drains, sewers, etc. (15 Barb., 210.) But the individual has but little more than the right of travel. He must travel in a customary or at least a reasonable manner, either on foot, horseback or in any vehicle drawn by animal power. As to whether he could travel there with a steam road carriage or a self-propelling farm engine depends upon whether such a use of the road is reasonable. At the present time travel in highways by such means cannot be regarded as improper or unreasonable. The development of civilization necessitates gradual innovations of this sort. (114 Mass., 350.) Nor is it longer unlawful to proceed along the highway with an elephant or a train of wild animals, and if one's horse gets frightened at such things he has no remedy against their owner. (38 Barb., 14.)

In Michigan the court held that persons using horses for travel on the highways have no superior rights over those traveling by other permissible means, and that the fact that a horse was frightened by a steam road engine is not of itself sufficient to render the owner of the engine liable for the injury resulting. The steam engine in the highway is not necessarily a nuisance. (34 Mich., 212.) The Illinois court uses this language: "To say that a new mode of passage shall be banished from the streets, no matter how much the general good may require it, simply because the streets were not so used in the days of Blackstone, would hardly comport with the advancement and enlightenment of the present age." (21 Ill., 516.)

It has been held that the highways may be used for the purpose of moving buildings in them, providing such use does not necessarily or unreasonably obstruct the free passage of the public over and upon it. The law will justify such obstructions if of a partial

and temporary nature, if they arise from necessity and are for the convenience of mankind, particularly if they occur in the customary or contemplated use of the highway. The question of their necessity and reasonableness, and of the customary use, are for the consideration and determination of a jury under all the circumstances of each particular case.

But a person moving a building through the street must see to it that he does not injure the shade trees growing upon either side, nor damage other objects, for he will be liable if he does. (35 N. H., 257.)

The street may be used for temporarily depositing goods, for loading or unloading, if necessary, and the work is done with despatch and caution. (43 Iowa, 199.) Likewise a street may be temporarily used for the purpose of erecting or repairing a building. If the use of the street is necessary for that purpose and the obstruction is not unreasonable and caution is observed to prevent injury and inconvenience, the law will permit a temporary and limited use of it for that purpose. (1 Serg. & Rawle, 219; 1 Denio, 530.)

Of course no one can throw sticks or stones or deposit rubbish in the highway. That is a nuisance and an indictable offense.

3. Travel with Teams, etc. The rules of law respecting the conduct of travelers on the road have reference mainly to travelers with vehicles drawn by horses. Foot passengers and equestrians really need no rules save those which reason and prudence suggest, and for the most part the law provides no other. The injury resulting from collisions between footmen are at most only trivial, but a collision between vehicles often results in serious destruction of property if not injury to life and limb. Hence it becomes necessary to provide rules for the prevention of such catastrophies, and it may be laid down as a general principle that the one who is guilty of a violation of such rules which results in injury to another party who is in no way blamable is responsible for the damage done.

4. Which Way to Turn. To prevent collision and secure travel from interruption it is necessary that there be certain well-known rules in regard to the meeting of vehicles and teams. These rules have been called the *law of the road*, and the most important one of them is that when two travelers with teams coming from opposite directions meet in the highway each shall

turn to the right in passing. In England the rule, based on long honored custom, is to keep to the *left*, which is just the opposite of our rule. The American rule is enforced by statute in, I think, all of the States. The statutes of the different States upon this point are quite similar, the one in Michigan, which may be given as a sample, being as follows: "Whenever any persons shall meet each other on any bridge or road, traveling with carriages, wagons, carts, sleds, sleighs or other vehicles, each person shall seasonably drive his carriage, or other vehicle, to the right of the middle or traveled part of such bridge or road, so that the respective carriages or other vehicles aforesaid may pass each other without interference." A penalty of twenty dollars is provided for a violation of this provision, and the offending party is made liable for all damage caused by the offense.

A traveler is not obliged to keep on the right side of the road all the time. He may drive where he pleases, or where the going is best, so long as he turns to the right when he meets another team. If his load be so heavy or his vehicle so cumbersome that he cannot seasonably turn out so as to yield the left side of the road to an approaching team or vehicle, then he had better keep to his own side. (4 Esp., 273; 14 N. H., 307.) Yet it should be observed that this rule of the road is not an absolute or inflexible one. Circumstances may and often do arise in which a deviation from it is not only justifiable but even necessary. In the crowded streets of a large city reason and prudence may often dictate a departure from the rule, and reason and prudence should in such case prevail. If one were driving on his right side of the street and should see ahead of him a team or horse coming at a furious rate on its wrong side, he would not be justified in remaining there. It would be his duty to turn out so as to avoid an accident though he had to turn the wrong way. (8 Car. & Payne, 103.) If a traveler meets another who does not seem to understand the rule about turning to the right, he is not justified in permitting himself to be injured and then seeking to recover damages therefor from his fellow traveler who was wrongfully on the wrong side of the road. (11 Gray, 418.) Reason and prudence would indicate that he should use due care to get out of the way, though in so doing he had to sacrifice his right to that side of the road. In Maine when persons meet and pass each other upon the public highways it is the duty of each to pass to the right of the middle of the traveled

part of the road *when practicable*. And when it is not practicable, that is when it would be difficult or unsafe for a traveler to do so, on account of his vehicle being heavily loaded, or for other cause, he should stop a reasonable time at a convenient part of the road to enable the other to pass. (25 Me., 39.)

A person may turn to the left of the road for the purpose of going up to a house or store, but he must be careful not to obstruct a traveler lawfully using that side; he should wait till such person has passed on. (11 Me., 338.)

These rules of the road apply to all roads or ways used by the public as such whether they have been legally laid out or not. If the public makes use, even wrongfully, of any way which is not a public street, these rules for their conduct in highways attach to it. (23 Pick., 201.)

5. Crossing a Road. Where roads cross each other at right angles the rule, as formerly laid down, was that persons traveling on the side road should take care not to interfere with persons lawfully using the main road; they should wait before crossing till they can pass without interfering with travel upon the main street. (1 Pick., 345.) But inasmuch as there may be misunderstanding or dispute as to which is the main road, the better doctrine now seems to be that parties on each road must use due care and prudence.

6. As to Passing. When travelers are driving in the same direction on the same street and one wishes to pass ahead of the other, the rule in England is that the foremost traveler shall bear to the left and the other shall pass on the off side. In this country there is no rule upon this subject. Any traveler may use the middle or either side of the road at his pleasure without being bound to turn aside for another traveling in the same direction, providing there is room enough to pass on one side or the other. If there is not sufficient room it is the duty of the foremost traveler to afford it by yielding up an equal share of the road on being requested to do so. If he refuses he becomes liable for the injury or delay so caused, though such refusal would not give the other party a right to force his passage and so cause a collision, as he has redress by due course of law. (1 Watts, 360.)

Where a street railway runs through a street it is the duty of the traveler to yield the way to the horse cars. The owners of the road have the right of way, or right to the unrestricted use of

their tracks; but it is not unlawful or negligent for others to drive on the tracks with common carriages so long as they do not unnecessarily obstruct them. (15 N. Y., 380.)

7. Horseback Riders. In England persons riding on horseback are subject to the same rules, respecting conduct in the highway, as are persons driving in vehicles. (8 Car. & Payne, 103.) But in this country it is held that there is no law of the road respecting equestrians. A man on horseback meeting a horse or vehicle is not with us required to turn to any particular side, as to the right or left; but he must govern himself in this respect according to his notions of prudence at the time and under the circumstances. (24 Wend., 465.) There is, however, an almost universal custom which is sanctioned by common consent and immemorial usage—giving it the force of positive law—that a person on horseback should yield the traveled path to one who is traveling in a wagon or other vehicle. (24 Id., 465.) In fact, common sense and propriety would indicate such to be a fair rule. Though a foot passenger or an equestrian has without question a right of way as well as the driver of a vehicle, still the enjoyment of the right is to be regulated by reason and justice, and it certainly would not be either to compel a teamster with a heavy load to leave the beaten track of the road if there is room enough for them to pass on either side.

8. Foot Passengers. All persons have the same right to walk in the street that they have to ride or drive there. And they have the same right to walk in the middle of the street that they have to walk in the foot paths at the side. When one is walking in the wagon track, however, he must observe greater care and caution to avoid collision with vehicles; but the fact of his being there is not of itself negligence. (5 Car. & Payne, 407.) It is his duty to turn out for teams, especially if heavily laden; but teamsters have no right to run over him simply because he happens to be in the way. (45 Mich., 62.)

Foot passengers have the undoubted right to cross the street at any time or place, and persons driving along it must take due care not to run into them. The foot passenger must also exercise due care to avoid injury. If he sees a team coming at rapid rate he is not justified or warranted in attempting to run across ahead of it, nor should he ever attempt crossing a crowded thoroughfare without first carefully looking each way. For, be it remembered, no

one can recover damages for an injury which due care on his part would have prevented. (8 Car. & Payne, 373.)

9. Rate of Speed. It has been remarked that persons using the highway must exercise due care for the prevention of collisions or other injuries. This includes an observance of the duty to drive at a moderate rate of speed. To drive faster than an ordinary reasonable traveling pace upon the highway, and especially upon the streets of a city, is not only culpable negligence, but is generally prohibited either by statute or by municipal ordinance. As to what is an immoderate rate of speed is a question for the jury to decide. It is such a rate that the horses cannot be seasonably stopped or properly directed, or as the Supreme Court of the United States puts it, "such rapid driving as under the circumstances amounts to rashness." (13 Peters, 181.) In Pennsylvania it was held that driving at a rate of fifteen miles an hour, or a mile in four minutes, on a public highway, was unlawful, and that if death resulted from a collision caused by such driving, without any fault of the injured party, it would amount to murder in the second degree.

10. Vehicles Must be Roadworthy. Another precaution which the observance of due care imposes on the traveler is that of having and keeping his vehicle, tackle, and harness in a good roadworthy condition. Negligence on the road consists not alone in careless or immoderate driving, but in having a coach or other vehicle of insufficient strength, or having an improper harness. (8 Car. & Payne, 691.) If injury results from this cause the owner of the defective and unroadworthy vehicle will be liable for it.

11. Stopping by the Wayside. Travelers may stop temporarily by the roadside for any legitimate purpose connected with their travel, as the loading or unloading of goods, watering of horses, etc. But this stopping must be at such a place and in such a manner as not to interfere with the primary use and purpose of the highway as a thoroughfare of travel. If the street were narrow and there were much travel in it the law would not justify a habitual use of a portion of it for purposes of loading and unloading. Thus where a street was only thirty-seven feet wide in front of one Mr. Russell's warehouse, and he kept three large wagons standing there much of the time, and piled the sidewalk full of his goods, it was held to be an unreasonable interference with the free

passage of the public, and to be indictable as a nuisance. (6 East, 427.)

12. Do not Leave your Horses Untied. If a horse is left standing untied in the highway the owner of it is liable if it runs away and does damage. If a third person carelessly frightens it, and it runs away and does damage, not only such third person but also the owner of the horse which he left untied will be liable for the injury caused. (2 E. D. Smith, 414.) If a horse runs away in the streets of a city the owner of it is presumed to be guilty of negligence. Of course if the horse runs away, without the fault of the driver, such driver or owner is not answerable for the injury done; but he must show that he was not in fault as the presumption is against him. (Bright, Pa., 186.)

If two persons driving along the highway strive to get to the same place at the same time, that one is in the wrong who first uses force. (27 Cow., 585.)

13. Fractional Horses. To knowingly drive an unbroken or vicious horse on the public highway has been held to be negligence. No man should drive into the street, where people are traveling, where children may be, and have a right to be, with a horse which he knows to be fractious, unmanagable, or vicious. If he does he is liable for any injury which may be thereby caused. In view of this it would seem that farmers should think twice before committing the very common imprudence of going upon the street with a team of colts which they are just breaking. Suppose the colts were to break away and dash over a little child on its way to school and kill it. The farmer might find himself convicted of manslaughter.

14. Liability for Misconduct on the Road. There are in most of the States legal penalties provided for the violation of statutory rules concerning travel in the highway. For instance, in Michigan there is a penalty of a sum not exceeding one hundred dollars, or imprisonment for not more than thirty days, inflicted for the willful running of one's horses in the highway. There is also a similar penalty for employing a drunken driver to drive one's carriage on the road. (C. L., Mich., C. 30.) But independent of and in addition to any of these statutory punishments there is a liability which rests upon every careless driver, which may be stated as follows: "Whenever in consequence of a violation of any of these rules of the road, or the want of proper care

and diligence in any other respect, a collision ensues, or some other accident happens, the party through whose fault it happens is liable for the injury, unless the injured party, through his own negligence or misconduct, contributes to the result." If it appears that the damage was occasioned partly by the negligence of one traveler and partly by that of another who is injured, no action will lie, no damages can be recovered, because of the general and very proper principle which underlies the law of negligence, that if one contributes in any way to the negligence which results in his injury he is not entitled to recover. (See Angell on Highways, page 429, and many cases there cited.)

15. Obstructions and Nuisances. Any act or thing which unnecessarily impedes the free passage and lawful use of the highway by the public is a nuisance. Nuisances are either positive, like actual barriers or other obstructions placed in the highway, or else they are negative, like those resulting from want of repair. The latter kind can only be committed by those upon whom rests the obligation of repairing the highways; the former can be committed by anybody. A nuisance, being an offense against the public, can only be proceeded against by indictment, unless some individual has suffered special damage, over and above the rest of the public, in which case he may seek redress by private action against the one who caused it.

To put the highway to any use except that of travel, and those incidental uses connected with travel which were mentioned in the subhead on that subject, is, if it interferes with the free passage of the public, a nuisance. The many things that have been held to be nuisances cannot be enumerated here, but among them may be mentioned buildings which protrude upon the highway (19 Pa., 412); overhanging boughs which incommode the passage; to put a fence or gate across the highway (11 S. & R., 345); or build a fence alongside it inside of its outer line (37 Barb., 301); to deposit lime or gravel in it (1 B. & P., 404); to leave logs or lumber in it (5 Ad. & E., 469); to leave any object in it or alongside it which will frighten horses of ordinary gentleness (30 Conn., 129); or to leave a loaded wagon standing in it for an unreasonable length of time. (10 Abbott, Pr., 365). These have been regarded by the courts as nuisances, and the lists might be extended. There is no doubt that the leaving of farm implements by the roadside, as is often done, or the turning of the road into a barn-

yard, as some farmers do, is in most instances a nuisance, and the farmers who practice it are not only guilty of very bad taste, but are running the risk of having to pay dearly for their slovenness, if on some dark night somebody is injured by it.

The law is well settled that whoever places an obstruction or nuisance upon or across a public highway is liable for the injuries that result from it. (2 Ill., 229; 53 Barb., 629.)

16. Abatement of Nuisances. It is the duty of the officers having charge of the highway to remove the obstructions and abate the nuisances that may be upon it, and the township or city may be liable for any resulting injury if they fail to do this (14 Gray, 249); but any individual, who has occasion to use the highway in a lawful way, may remove any obstruction that he may find upon it, and if necessary to do so may go upon the land of the person who erected the obstruction, doing as little damage as possible to the land. (10 Mass., 70; 18 Wis., 265.) But he must do this at some peril, for if he fails to establish the fact that the thing removed is a nuisance, he will be liable for trespass. (35 N. H., 257.)

Trespasses on Rights of Adjacent Owners. Uses of the highway which may not be nuisances may still be unlawful as being trespasses upon the rights of adjacent owners. As has been observed, persons owning land on either side of a highway own to the middle of the road, subject to the public right of passage and rights incidental thereto. Every other use to which the highway can be put, which does not interfere with the public rights, belongs to the adjacent owners. An injury to these rights of adjacent owners is a trespass just as much as though it were committed on the enclosed land of such owners. The mines, quarries, springs of water, timber, earth, gravel, grass, etc., belong to the adjacent owner, and he may maintain the action of trespass, ejectment or waste, as the case may require, against any one who unlawfully interferes with them. (15 Johns, 447.) Trespass has thus been successfully maintained against one who dug up and removed the soil (12 Wend., 98); also against one who cut down the trees in the highway (1 Cow., 238); also against one whose horse gnawed and injured a tree there; also against one who stood in the street and used abusive language to the adjacent owner (11 Barb., 390), for while so engaged he was not using the street for the lawful purpose of traveling, but was a trespasser.

17. How Roads Are Made. Highways come into existence in one of the three following ways: They are either laid out and constructed by *legislative authority* under the provisions of State laws upon the subject; or are given to the public by individual land owners, which is called *dedication*; or else they are acquired by *prescription*, that is by long adverse use by the public.

18. By Legislative Authority. The provisions of the various State statutes for the construction and maintenance of public highways are or ought to be familiar to all freeholders. The details of them cannot be given here. In general the work, so far as country roads are concerned, is entrusted to certain township officials, often called commissioners of highways, who, on application of a certain number of freeholders, pass upon the necessity of the proposed highway, determine the exact route, location, and direction of it, and ascertain and designate the just compensation to be given to those whose lands are to be thus taken for the purpose. The main thing to be remembered in the method of making roads by legislative authority is that the *necessity* for the proposed highway be in some way judicially determined, and that *just* compensation must be made to those whose private property is thus taken for public use.

19. Right of Eminent Domain. This right which the State Legislatures possess of taking or of authorizing the taking of private property for the public use which is called the right of *eminent domain*, may be and often is delegated to individuals or to corporations like railroad or turnpike companies, who under and by virtue of such power may condemn and take private property. (2 Peters, 251.) It is in this way that railroads, turnpike, and toll roads are usually laid out and constructed. When private property is thus taken, under and by virtue of the right of eminent domain, only so much or such an interest in the property can be acquired as the exigencies of the use it is taken for demand. (15 Conn., 318.)

In the case of public highways only the *use* of the land for the purposes of travel is required, and that is all that generally can be taken. When, therefore, the road is discontinued or abandoned, the land reverts to the original owner or his heirs and assigns freed from the incumbrance. (2 Iowa, 288.)

20. By Dedication. When an owner of lands lays out a street through them and appropriates the land in the street to the

use of the public, such street when accepted by the public becomes a highway by dedication. Dedication, then, is a gift of land to some public use which becomes complete on being accepted by the public.

Dedications are either by deed, by express declaration, or are presumed from long acquiescence by the owner in the public use. No particular formality is necessary. They may be written, oral or evidenced by the acts of the owner. If the intention to dedicate is in any way clearly expressed and the public accepts the gift, it will conclude the donor from ever asserting any right in opposition to or incompatible with the public use. (5 Taunt., 125; 19 Pick., 405.) A dedication is presumed after from ten to twenty years use by the public with the owners' knowledge (22 Ala., 290), and in some cases after a shorter use if the circumstances favor the presumption. (4 Cal., 114.)

Acceptance by the public is essential to make the dedication complete. Inasmuch as the public must assume certain responsibilities in connection with streets like the duty of repairing and the liability resulting from failure to repair, it is essential that it in some way accept the gift of a street before these responsibilities can be thrust upon it. Acceptance, it is said, may be indicated by the public using the street. The English doctrine, which is recognized by a few of the older American decisions, is that mere use by the public is sufficient to bind the township, or other body having charge of the streets, with the duty to repair and to impose upon it the liability for want of repair. (23 Wend., 103.) But the great weight of authority in America is to the effect that towns are not liable for repairs, or for injuries resulting from want of repairs, until they have in some way officially adopted the street, either by formal acceptance or by indirectly recognizing it in some way as by repairing it or exercising some authority over it. (13 Vt., 424; 16 Barb., 251.)

21. By Prescription. Prescription, when applied to the acquirement of public rights of way, is but another name for presumed dedication. When streets which have never been regularly laid out and opened have been long and uninterruptedly used by the public, a conclusive legal presumption arises that they were at some early period regularly established. The public can gain a right of way by long use just as an individual can thus gain a private way. (13 Pick., 94.)

22. Repair and Maintenance of Highways. In England the duty of caring for and repairing the public roads rests by common law upon the parishes, and the duty of constructing and caring for bridges devolves upon the counties. In this country we have no political divisions corresponding with parishes, and so in the several States there are statutes assigning the duty to cities, villages, and townships of maintaining the public highways within their respective jurisdictions.

Country roads are then in America under the general care of the townships. Toll roads of course are under the care of the corporations having the franchise of collecting toll, but the townships are in some States given the duty and authority of seeing that they are kept in repair. Townships are by statute made liable to any one who is injured in person or property by reason of their neglect to keep their highways in a state of good repair.

23. Liability for Failure to Repair. This liability which townships and other municipal corporations are in this country placed under in respect to their highways, is a purely statutory one, and its precise measure depends upon the wording of the respective statutes of the various States. In Massachusetts, Maine, and Rhode Island the obligation is to keep the highways in repair "so that the same may be safe and convenient for travelers with their teams, carts, and carriages, at all seasons of the year."

In Vermont and Connecticut the duty imposed is to keep the highways "in good and sufficient" repair. The Michigan statute says: "Highways, bridges, cross-walks, and culverts shall be kept in good repair and in a condition reasonably safe and fit for travel." What is meant by these statutes is that public roads must be kept in such a state of repair as in view of their location, the kind and extent of travel upon them, and all circumstances connected with them, seems reasonably convenient and safe. A road should be kept fit for travel by the usual and ordinary modes which are customary in the community. A main and much traveled thoroughfare should be kept in better condition than a side road but little frequented. A road which would be perfectly safe and convenient in the country might be totally unsafe and inconvenient in the city. Regard must constantly be had to the usual and probable uses to which the road will be put, and it must be kept in a condition suitable for such use. If an injury occurs and suit is brought to recover damages for it, it is for the jury to deter-

mine under proper instructions from the court whether, in view of all the circumstances, the road was reasonably safe and convenient. (17 How., 161.) And in determining the question the jury are to consider the location of the road, the geographical features of the country, the difficulty of keeping the road in a better condition without unreasonable expense, the season of the year, the kind and amount of travel having occasion to pass over it, etc. (12 Cush., 488.) A road running up the rocky side of a mountain might be reasonably safe and convenient if it were but wide enough for a single team with places fixed for passing only at intervals, but a road over the level prairie might not be reasonably safe and convenient unless it were kept smooth and free from obstructions for the full width of two or four rods. Bridges and culverts are to be subjected to the same rule. They must be kept reasonably safe and convenient, and strong enough to bear the heaviest loads that it is usual and customary to bring upon them, or that might reasonably be expected would be brought upon them. The Supreme Court of Massachusetts said that a town would be liable for an injury to an elephant, driven with due care along the road, occasioned by a defect in the highway, if in the opinion of the jury an elephant was an animal which it was proper and reasonable to take over a highway kept for the reasonable use of the public; and under this instruction the jury disagreed. (14 Gray, 242.) In a grazing country like Vermont a bridge should be kept sufficiently strong to sustain a drove of cattle, if passed over with common care and prudence. (6 Verm., 496.)

It is the duty, likewise, of towns to remove obstructions from their highways, and here again the same rule of reasonableness applies. What would be a serious obstruction in a much traveled and crowded street might possibly amount to nothing in a quiet country by-road. Towns have been held liable for injuries resulting from a log lying outside of a traveled path (18 Me., 286), and objects at the side of the road which frighten horses have been held to be nuisances, and as such indictable (30 Conn., 229), though where an injury was caused by large loose stones lying outside the gutter seven feet from the traveled wagon way it was held that the township was not liable. (16 Pick., 189.)

The duty of caring for the highways includes also that of protecting travelers from dangerous places, pit-holes, precipices, and the like. Down in Maine a horse was once drowned in a deep

mud hole at the side of the road which had the appearance of being a convenient watering place. And the court said that "although towns are not obliged to furnish watering places for the public convenience, but when they are provided by nature in the highway they ought not to be allowed to become pit-falls, first to allure and then to destroy horses or other animals turned aside to partake of the refreshment to which they are thus invited." (12 Me., 198.) If a road pass along the edge of a steep bank or along the verge of a precipice it is the duty of the town to properly guard the edge of the road by walls or railings (13 Pick., 102; 6 Wis., 377), and if they fail in this duty they are liable for the consequences. In cities sidewalks are regarded as part of the street, and as such are to be kept in repair through their entire width.

24. Discontinuance of Highways. Streets may be discontinued by formal action on the part of the towns, cities, and villages having the same in charge, when they are given authority to do so, which they generally are by statute; or they may be vacated by the courts in certain cases (a matter not necessary to advert to here), or they may be lost by abandonment. Whenever the public easement or right of passage is in any way relinquished, the land in such highway reverts to the original owner or their heirs or assigns freed from the incumbrance.

CHAPTER XIV.

OF RIGHTS ON THE FARM.

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| 1. Dominion over one's Land. | 8. Trespasses by Servants. |
| 2. Right of Exclusive Possession. | 9. Trespasses by Domestic Animals. |
| 3. Implied License to Enter Upon Lands. | 10. Trespasses by Dogs. |
| 4. License Given by Law. | 11. Trespasses by Persons Hunting and Fishing. |
| 5. Express License. | 12. Who Owns Wild Game. |
| 6. Trespass Upon Land. | 13. Possession of Land. |
| 7. How Trespasses May be Committed. | |

1. Dominion Over One's Land. The ownership of land carries with it very large rights. As we shall see, the control which a man may exercise over his property is well-nigh absolute, for with very few exceptions, which are herebelow pointed out, a man may do what he pleases with his own land. The government, the community, and in a few instances certain individuals have certain limited rights in all lands; but aside from this every man is the autocrat of his own premises.

2. Right of Exclusive Possession. Among the most important of the rights incident to the ownership of real property is that of exclusive and undisturbed possession of the land. No man can so much as put his foot upon another's land unless by permission, express or implied, or under authority of law, without committing a trespass for which an action will lie. The mere crossing of one's boundary or walking over one's fields, without permission, is a trespass for which damages may be recovered. Of course the damages would be merely nominal, (that is a very small sum, as six cents), unless the owner could prove some special damage or could show malice on the part of the trespasser, and no reasonable man would sue another for innocently stepping upon his land. Still

the law gives him the right to do so. It holds his premises sacred to him. His boundary, like that between nations, is not to be crossed without permission.

This permission, called in law a *license*, is sometimes given by law, more often expressly by the owner, and it is in some cases implied from custom and other circumstances. In order to know, then, whether a given entrance upon lands is a trespass, we must ascertain whether it was licensed in any of these ways.

3. Implied License to Enter upon Lands. All business men, merchants, dealers, professional men, and all persons having any business to transact with the public, impliedly invite any and every one to enter upon their lands or premises for the purpose of transacting business in their respective lines. (5 Watts & S., 141.) But the invitation is extended only to those who may wish to enter for the purposes for which the various places are thrown open. It would be an abuse of it to enter for any idle, ulterior or mischievous purpose, and one who did so would be a trespasser; though it is possible that one may visit, out of mere curiosity, any place of business which is thrown open to the public, without incurring liability. Certainly one may enter a shop for the purpose of looking at the goods or inquiring their price though he does not intend to buy.

Likewise every person extends to others a license, by implication, to enter his grounds and come to his house by the proper way and at proper times, for social courtesy, business, information, etc., and the custom of the community determines the limit of this implied license. (65 Penn. St., 273.)

If a person leaves anything exposed to view which would be likely to tempt or attract children, it has been held that he extends an implied license for them to enter and see it or use it (21 Minn., 207; 44 Iowa, 27); and the leaving of meat exposed so that dogs can come and get it has been held to amount to an implied invitation to the dogs to help themselves, and no action would lie as against their owners for the trespass. If one baits traps upon his premises for dogs he is liable to their owners for their value if they are killed. (4 East, 277.) If one sells goods which are in his possession, as cattle in the pasture or crops in the field, and nothing is said about their being delivered, he impliedly licenses the purchaser to enter his premises to get them. (39 Ind., 267.) Other instances of implied license might be given, but these are sufficient to illustrate the principle.

4. License Given by Law. The law gives persons a license to enter upon private lands in certain instances of which the following are illustrations:

If an officer have a summons, warrant, or other process from a court, and it becomes necessary to go upon private grounds or into buildings to serve it, the law licenses him to do so. He may go wherever the man is, to serve the paper upon him, except into his dwelling if he finds that closed and locked. "Every man's house is his castle." This familiar maxim means that a man's house is held in law sacred from intrusion, and that the owner may close, lock, and defend it, not only against private persons but against the officers of the law. If the latter attempt to force their way unlawfully they become trespassers, and may be repelled to any extent necessary. This privilege extends only to the outer walls of the castle, that is the outer doors or windows of the house. If the officer finds these open he may break down inner doors in order to serve writs without committing trespass. He may break open the outer doors of barns, store houses, etc., as the castle means only the dwelling or habitation. Even the outer doors of the dwelling may be broken open for five purposes, as follows: To arrest for treason, felony, breach of the peace, serve a search warrant, and to dispossess the occupant when the possession has been by a proper court awarded to another. (Cooley on Torts, 314.)

Another case where license is given by law is that of entering private lands to abate a nuisance. If a person maintains or permits a nuisance to exist upon his premises, and such nuisance specially injures some particular individual, such individual may, on the owner's refusal to remove it after notice, go upon the land and abate it himself. If he is resisted he is not justified in persisting and committing a breach of the peace in order to accomplish the abatement. In such case he must resort to the ordinary legal remedies. (32 Texas, 208.) A person who thus takes upon himself the abatement of a private nuisance takes also upon himself the responsibility of establishing that the thing abated is a nuisance. If he fails in this, he becomes liable for the trespass; or if he succeeds in this, but does unnecessary injury in abating the nuisance, he becomes liable for the excess. (27 Ind., 394.) If the nuisance is of such a character that the security of lives and property requires its abatement at once, no notice is then required. The

individual may abate it without first requesting the owner to do so. (Cooley on Torts, 48.)

A common instance of license given by law is where a fire breaks out in a city. In such case the public authorities or private individuals may enter upon adjacent premises for the purpose of destroying or arresting the progress of the flames. This license is based on overruling necessity, and it extends to whatever may be necessary to do in order to stop the conflagration. Property may even be destroyed—whole blocks of buildings blown up if necessary—without liability. The owner has no claim on the officials. All that he can do is to seek redress from the State, and accept what the State sees fit to give him, if anything. (31 N. Y., 164.)

Where a highway becomes obstructed or impassable, the law gives travelers license to pass over adjacent land in order to get around the obstruction, but they must do no unnecessary injury to the land. (18 Tex., 858.)

So where it is proposed to take property under the right of eminent domain there are statutes giving license to certain persons to enter and make preliminary surveys, etc., without incurring liability. (25 Mo., 277.)

If a license given by law is abused, that is if advantage is taken of it to gain an entry, and then unlawful or unlicensed conduct is indulged in, it has the effect of at once revoking it, and the party becomes a trespasser from the beginning. (8 Cow., 290.)

5. Express License. Where one person gives another permission or authority to enter upon his lands for any purpose, without at the same time giving him any interest in the lands themselves, such permission is an express license; and it may be given verbally or in writing. A license is a personal matter between the parties. When given to one it cannot be by him assigned to another. (24 Pick., 187.) It can be revoked by the one who gave it at any time. That is to say, further acts under it may be at any moment prohibited, and if they are then done they are trespasses; but all acts done under the license before its revocation are justified and protected by it, even though it is afterwards revoked. (14 Ill., 446; 20 Wis., 531; 26 Mich., 186.) It is revoked by a sale of the land. (51 N. Y., 246.) If not acted upon within a reasonable time such fact has the effect of revoking it. (54 N. H., 109.) One acting under a license must use due care not to do anything which will injure the land. (20 Mich., 156.) The one

giving the license assumes no particular duty toward the licensee except to refrain from acts wilfully injurious to him. There may be some exceptions to this, as where a railroad company give a license to the public or to private individuals to cross their premises. They are under obligation to use a high degree of care to prevent injury. (65 Penn. St., 269.)

If the license is coupled with an interest it cannot then be revoked at the pleasure of the licensor. That is to say, if a legal interest has been conveyed to a man in connection with a license, to the enjoyment of which the license is necessary, the license will live as long as the necessity. (11 Conn., 525.) Thus if I give a man license to erect and live in a house on my land I cannot revoke the license so as to deprive him of the house. I may terminate his right to live there, but he will still have the right to go upon the land and take away his building. (10 Barb., 496.)

A license, coupled with an interest in land, can only be created by deed or such other writing as will satisfy the Statute of Frauds. (See Ante., p. 35.) There are a few exceptions to this, of which a license to flow lands is one. (24 N. H., 474.)

6. Trespass Upon Land. We have seen that every entrance upon the lands of another which is not licensed in some of the ways above enumerated is a trespass. It makes no difference whether the lands trespassed upon were enclosed with fences or not. If there are no fences the law encircles the land with an imaginary inclosure to pass through which is to break through the close and commit a trespass. For the mere entering upon the land only nominal damages can be recovered, and there are some trespasses which are said to be excusable altogether. Of these are trespasses in self-defense in order to escape from some danger or apprehended peril, or in defense of the possession of one's goods and chattels, or to recover his cattle or other domestic animals which have escaped from him; but these belong really with the class of implied licenses above referred to. If, however, an entry upon land is made after notice or warning not to trespass, it then may become a very serious offense, and if it amounts to a wilful and insulting invasion of proprietary rights, heavy exemplary damages may be recovered. (33 Ill., 473.)

7. How Trespasses May be Committed. Trespasses may be committed not only by a person going himself*unlawfully upon another's land, but by sending his servants there, allowing his

domestic or other animals to escape there, or by casting inanimate objects upon the land. This latter kind of trespasses are not of very frequent occurrence. If one throws sticks upon another's land, or dumps his rubbish on the side of the highway next to another's land, or throws stones at another's buildings, it is a trespass. So, too, if one cuts trees so that they fall upon another's land, even though he did not intend or suppose that they would fall that way, or reach so far, it is a trespass. (2 Ired., 42.) Or if one is blasting rocks and the fragments fly and fall upon another's land it is a trespass, and for any of these trespasses an action will lie. (58 N. Y., 416.)

8. Trespasses by Servants. If a master directs his servant to commit a trespass, the master is liable. Or if the servant in the prosecution of his master's business, and within the scope and limit of that business, commits a trespass, though not specifically directed by the master to do so, but is given general authority to do what he thinks proper, the master will be liable (19 Wend., 345); and the master may be liable if the trespass is committed contrary to his express orders if it is not done in wilfull disregard of those orders. (14 How., 468; 10 Ill., 509.)

But if the servant goes outside of his master's business and commits a trespass on his own account, the master is not liable.

9. Trespasses by Domestic Animals. If one's cattle, horses, sheep or swine go upon the lands of another and there do damage, it is a trespass for which the owner is liable. And it does not make any difference whether the lands are enclosed by fences or not. This is the common law rule to which some exceptions are made by statute in America, as is pointed out in Chapter XVI on Farm Fences. It is, in the absence of a statute or regulation to the contrary (and such statutes are of doubtful validity), just as much a trespass for one's cattle to cross an invisible boundary line as to leap over a stone wall. (19 Johns, 385.) And the liability on the part of the owner does not depend on his being careless or negligent in letting his cattle escape, for it is his duty at his peril to keep them upon his own premises.

There is possibly one exception to the rule last above mentioned, and that is in the case of cattle escaping while being driven along the highway. If one is driving his cattle along the highway and they escape from him, without any fault or negligence on his part, he is not liable for their trespasses on private grounds, if he removes

them within a reasonable time; and what would be a reasonable time would depend upon all the circumstances of the case. (4 H. & N., 631.)

Trespasses may be committed by one's animals in other ways than by tramping over another's fields. It has been held that if one's horse reaches over a division fence and bites and injures another's horse, it is a trespass which renders the owner liable. (10 C. P., 10.)

10. Trespasses by Dogs. At common law the trespasses committed by dogs, unlike those committed by other domestic animals, are not chargeable to their owners. The dog does not seem to have been regarded as such a valuable kind of property as that its owner became responsible for its acts. The mere running of a dog across one's fields, too, is generally so harmless a thing that the law does not regard it as an actionable trespass. But if a dog becomes mischievous and inclined to injure property, then its owner is bound to restrain it as soon as he has notice of such mischievous disposition, and if he fails to do so he then becomes liable for its trespasses.

If the owner of the dog were himself trespassing and the dog were going along with him and doing injury, though unbidden, the owner would then be liable,—the dog's trespasses being in such case regarded as a part of his own.

There are statutes in many States fixing the liability of owners of vicious and mischievous dogs, particularly of sheep-stealing dogs and dogs which bite and injure persons or animals. Generally these statutes do away with the necessity of proving a *scienter*, that is, that the owners of the dog knew of their vicious dispositions. They often provide for the recovery of double damages for such injuries, and make it the duty of the owners of such dogs to put them out of the way.

11. Trespasses by Persons Hunting and Fishing. It is so very common in this country for land owners to permit anybody and everybody to enter their lands for the purpose of hunting and fishing that many persons act as though they had a perfect right to do so. And indeed some American courts have gone so far as to hold that, because of the universality of this custom, persons may, in the absence of any notification to the contrary, suppose that they have implied license to do so, and that they may enter, particularly to take fish in small lakes and streams, with immunity.

(*Marsh v Colby*, 39 Mich., 626.) This, however, is not the common law, nor is it the general rule in this country. It is a trespass to enter for the purpose of hunting and fishing. But it would be well for those who wish to prevent or to prosecute such trespassers to give notice to them not to enter. This notice might be given by posting placards, though there might be difficulty in proving that such notices were brought to the attention of the trespassers.

If one enter another's land with dogs for the purpose of hunting, and the dogs do damage by way of chasing sheep, or the like, their owner is liable for the injury, though he had no knowledge of the dog's propensity to do such things. (1 N. Y., 515.)

The right to take fish in the fresh water streams of this country belongs, without doubt, to the owners of the soil under them to the exclusion of every one else. (17 Johns, 195; 43 Ill., 447.) This right, however, is one which, because of the relation of riparian owners, may be regulated by statute. Each riparian owner has the same right as every other; but if one near the mouth of the stream were to put a net across which would stop the fish from running up, he would spoil the fishing for all those above. Laws have therefore been enacted in most of the States regulating the enjoyment of this right, forbidding the use of seines in certain waters, and the taking of fish at all seasons of the year, and providing that an open way shall be kept for the free passage of the fish up and down the streams. Such legislation is valid and binding upon the riparian owners. (119 Mass., 300; 57 Ind., 119.) The right to fish in small lakes and ponds, like the right of fishery in fresh water rivers belongs to the riparian owners (32 N. J., 369); but in the larger lakes and tide-water streams the right belongs to the public, and all citizens have the right to fish in them. (60 N. Y., 56.) The exclusive right of fishery in small streams and lakes belonging to the bordering owners, it follows that for others to fish in them is a trespass. But as the mere entry upon water can do no harm, there may be some reason for regarding it as different from an entry upon lands. If the owner does not himself make any particular use of the right of fishery for purposes of profit, and has been in the habit of permitting persons to fish in his waters at their pleasure, it would seem that this custom would create an implied license for them to do so, and as above indicated some courts have so held. (39 Mich., 626.) Cer-

tain it is, that if one does not wish to have others fishing in his streams he should give them notice not to enter for such purpose, before he proceeds against them for trespass.

12. Who Owns Wild Game. While, as we have seen, it is unquestionably a trespass for a person to enter another's lands, without permission, for the purpose of hunting or fishing, still when he has entered and taken fish or game upon another's land such fish or game belongs to him. No action can be maintained for recovering it, or recovering its value, or recovering damages for its conversion. The law does not recognize any private property in fish, game, or wild animals, until they have been subjected to control. If one tames them, or secures them and keeps them confined or under his control, they then belong to him; but the mere fact that they are roaming over his land or swimming through his waters, does not constitute them his private property. (10 John, 102.) If, then, some fancy crack shot from the city, with his well trained setters, comes into the farmer's cornfield or wheat stubble and shoots a score of partridges or prairie hens that have grown fat upon the farmer's wheat, nothing can be recovered for the loss of the birds. (1 Sprague, 315.) Trespass is the only action that will lie, and for this probably only nominal damages can be recovered, unless notice were given not to enter for such purpose.

13. Possession of Land. Trespass upon real property is always an injury to the rights of the one in possession of it, and generally only one who is in possession can sue a trespasser. But if the land is leased to a tenant, and a trespass is committed upon it and permanent injury done, like destroying a building, cutting timber, or the like, not only the tenant who is in possession, but the owner, may maintain an action. So that two actions may be based upon one trespass.

Possession of land is a matter of great importance, as many valuable rights often depend upon the question of possession. Possession may be actual or constructive, and it may be rightful or wrongful. It is actual when the owner or one entitled to possession actually occupies or lives upon the land. It is constructive where the land is not actually occupied, but is, in contemplation of law, in the possession of the owner or person entitled to possession. If the owner does not live upon the land, nor no one else, it is constructively in the owner's possession. (11 Vt., 129.)

Actual possession is not lost by a temporary absence from the

premises. If the occupant goes away upon business or pleasure, his possession will be kept for him by his family, his servants, his domestic animals, or even by his goods and chattels.

A person who is in peaceful possession of premises is presumed to be in rightful possession until the contrary is proved; and peaceful possession is of itself sufficient to enable one to successfully maintain the action of trespass or ejectment against one who has no title. (38 Mich., 729.)

If the owner, or person entitled to the occupancy, loses or is deprived of possession by any means, he may regain it in several ways. At common law he could regain it by force,—by going himself and putting the intruder off. But as this led to breaches of the public peace, it was early prohibited in England, and it has always been against the laws of this country. It cannot be permitted, because one who attempts a forcible entry makes himself judge in his own cause and enforces his own judgment. Consequently there are statutory methods for having any one who has made a forcible entry upon a peaceful possession summarily put off. It makes no difference whether he owns the premises or has the right to possession or not. If he takes possession forcibly from one who has it peaceably, though possibly wrongfully, the law will compel him to give back the premises, and will not inquire into his title or rights in the matter until he has done so. (12 Wend., 488; 32 Vt., 82.)

But if one entitled to possession can make a peaceable entry upon his premises while they are occupied by another, that is to say, if he can get in and dispossess the other party by stealth, by taking him when off his guard, while temporarily absent, or the like, then such act is permissible, and it restores him to his full and complete possession. (50 Me., 325.) And he may resort to any means short of the employment of force in order to attain this end. (59 Me., 568.)

A person lawfully in possession may use any necessary force to repel or expel an intruder. An assault and battery may be lawfully committed in defense of one's property, or the possession of one's property, either personal or real, if undue or excessive force be not used. (80 Ill., 92.) A trespasser may be repelled, or if he has gained an entrance, he may be removed, by force. If he gained entrance quietly and without force he must be requested to leave before he can be legally put off by force; but if he entered

violently and with force, no previous request to depart is necessary. (4 Denio, 448.) Only so much force can be used as is necessary to put the trespasser off, and no more. (43 Vt., 417.) Although in the language of the law a man "must lay hands gently" on a trespasser, still if he is assaulted in his own house he is not obliged to retreat, but may defend his possession to the last extremity. (8 Mich., 150.) And he may even kill a burglar who is breaking in. (22 Ga., 478.) But where force is used, it must be used promptly and without delay. If there is any acquiescence on the part of the party who is dispossessed, he loses his right to use force. (8 Ohio, 40.) A person is permitted to defend a right by force, but he cannot recover in that way.

CHAPTER XV.

CONCERNING WASTE.

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| 1. General Rule as to Waste. | 6. Permissive Waste. |
| 2. Cutting Trees, Etc. | 7. Failure to Repair Buildings. |
| 3. Manure Made on the Farm. | 8. Injuries from Fires. |
| 4. Composted Manures. | 9. Remedies for Waste. |
| 5. Purpose of the Occupancy. | |

Among the injuries to land is the not uncommon one known in the law as *waste*. Waste, like trespass, is a harm done to real property, but unlike trespass which is committed by an intruder against the rights of the occupant, waste is committed by the person in possession of the land against the rights of the owner who is not in possession, or of some one else who has some future interest in the land.

Waste is either *voluntary*, as where it consists of some positive act by the occupant which causes injury to the premises, or it is *permissive*, as where it consists of some omission or neglect of duty which results in like injury.

1. General Rule as to Waste. It is impossible to lay down any single definite rule as to what in all cases shall constitute waste. What might be waste in one instance or one period and place, might in others be good husbandry. Perhaps whatever causes lasting and permanent injury to the premises is an act of waste, or possibly any unusual or unreasonable use of the premises by the tenant or occupant might be waste.

2. Cutting Trees, Etc. The foregoing is well illustrated by the law regarding the felling of timber. It is almost always an act of waste for a tenant to destroy timber or cut down trees, except as the same may be needed for fuel or repairs upon the premises. A tenant, whether for life or for years, is entitled to

take only so much wood as is needed for fuel and the repair of fences, agricultural implements, and buildings, and he is limited to what is reasonable for these purposes. (33 N. H., 18.) This rule is strictly enforced in those States or communities where timber is scarce. If the tenant takes more than is necessary, or for any other purpose, it is an act of waste; and it was even held that where a tenant took wood which was unfit for these uses on the premises and exchanged it for that which was, it amounted to waste. (17 Pick, 248.) But in many of the newer States, and especially where timber is very abundant, different views have been expressed. In Ohio, a widow holding lands under a dower right—which is a life estate—was held to have a right not only to her *estovers*, that is wood for fuel and repairs, but also to have a right to cut wood to sell for the purpose of paying taxes and taking care of the premises (2 Ohio, N. S., 180), and where the dower consisted mainly of wild lands, it was held that she might cut and clear off all the timber from a portion of them for the purpose of getting land for cultivation. (8 Ohio, 418.)

3. Manure Made on the Farm. It is waste for the tenant to sell or remove manure made on the premises if they are leased for agricultural purposes, for it is implied, if not expressed, in leasing lands for such purpose, that all manure made on them in the ordinary course of farm procedure shall be used on them for the purpose of keeping up the fertility of the land. (21 Pick., 367; 17 Pa. St., 262.) A tenant on leaving the farm at the expiration of his lease cannot take with him any of the manure made by his cattle during his tenancy, though fed on his fodder. (6 Me., 222.) Even if he bought the fodder elsewhere he could not take away the manure. Indeed the manure made on the farm in the ordinary manner is regarded as a part of the land itself, and must not only be left by the tenant, but will pass with the land on a sale of it, unless specially reserved in the deed. (44 N. H., 120.)

4. Composted Manures. It is probable that not only manures made in the ordinary way by animals, but also that made by composting, if mixed with that made by the animals, must be used by the tenant on the farm or left there by him when he departs. It was held that where eel grass was gathered from a river and mixed and composted with the other manure that it must be left by the tenant. (48 N. H., 90.) It would be waste for the tenant to dispose of it otherwise than by using it on the farm. If it were not

so mixed, or if it were made by some means entirely out of the ordinary course of husbandry, it would then probably belong to the tenant if it could be distinguished and separated from the other. (24 N. H., 355.)

5. Purpose of the Occupancy. The purpose or object for which the possession of lands was given has much to do with determining the question of waste. Of course it can never be waste for the tenant to do on the premises that for which they were specially leased, or any thing that he is specially authorized to do in his lease. But in the absence of any special agreement of this sort, the tenant can only put the premises to fair and reasonable use, and this depends often upon the previous use that the premises have been put to. It has been held to be waste for a tenant of farming lands to go digging them over in search of minerals or ores. So it is waste for the tenant to sell clay or gravel off the premises; though if they had been used in these ways before it might make a difference. (6 Mumf., 134.) Likewise it is waste for the tenant to turn a dwelling house into a shop or stable. He must use the buildings also for their legitimate purpose. He can, of course, make slight changes or necessary alterations, and can even tear down old buildings which have become worthless or dangerous. The principle in all these cases seems to be that the tenant must so use the premises as not to injure them or unfit them for their ordinary and legitimate use, and must take nothing from them except his reasonable estovers. (16 Conn., 322.)

Still it must be remembered that waste depends largely upon circumstances. Where timber was blown down by a tempest it was held not to be waste to cut up and sell it. (6 B. Monroe, 281.) Where land let for farming purposes was largely covered with timber it was held not to be waste to cut some of the timber and clear up more land, leaving sufficient for the purposes of the farm. (6 Barb., 9.) But this can now rarely be done. Where a farm in New York State was leased as a dairy farm the clearing of woodland upon it was held to be an act of waste. (10 N. Y., 114.)

6. Permissive Waste. This consists not in the occupant's doing any positive wasteful act upon the premises, but his allowing some one else to do so, or in his omitting to perform some duty toward the land which results in its permanent damage, or in suffering injuries to come to it which ordinary care would prevent. It often arises from failure to repair buildings, etc.

7. Failure to Repair Buildings. In respect to repairs upon premises the general rule is that the tenant is under obligation to make only such as are necessary to preserve the premises. He must exercise reasonable care and diligence for the preservation of the premises, and if he fails in this and injury results it is permissive waste. His duty is to use the premises with care and return them in as good condition as he got them, ordinary wear and tear excepted. It is waste for him to permit any stranger or trespasser to injure the premises. (1 Taunt., 183.)

8. Injuries from Fires. If fire breaks out upon the premises by reason of the carelessness or negligence of the tenant or occupant, it is a waste for which he is liable; but for accidental fires for which he is not to blame, he is not liable unless he has agreed to be. (14 Johns, 210.)

9. Remedies for Waste. Where waste has been actually committed, the usual remedy is an action on the case for the damages that have resulted from it. In some of the States, however, there are special statutory remedies for this wrong, the object in all being the same. But where waste has been only just begun or threatened, an injunction may generally be obtained to prevent it. These remedies may be had not only by the owner of the premises which are injured or threatened to be injured, but by any one who has a lien upon them or other interests in them which may be jeopardized. Thus a mortgagee who has loaned his money on the land can generally restrain by injunction the mortgagor or occupant from committing acts of waste, though there is some variation in the laws of the different States upon this point owing to the different doctrines which obtain in respect to the nature of a mortgage. (See Ante., p. 55.) A purchaser at an execution sale has likewise these remedies for actual or threatened acts of waste by the debtor while still in possession. (2 Doug. Mich., 184.)

CHAPTER XVI.

FENCES.

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| 1. Common Law as to Fences. | 6. When Division Fence not Necessary. |
| 2. Statutes Respecting Fences. | 7. Exterior or Road Fences. |
| 3. Division Fences. | 8. Railroad Fences. |
| 4. Fence Viewers' Duties. | 9. What is a Legal Fence. |
| 5. Fence Laws apply only to Improved Lands. | |

Perhaps there is no single legal subject that gives rise to more petty annoyances and disputes in a rural community than the law regarding fences. Fences are expensive. It is said that the fences of an average agricultural community cost more than the houses. People do not wish to build more than they are obliged to. These facts make the subject one of considerable importance. An understanding of the legal aspects of the matter is desirable as a means of saving trouble and preventing litigation.

1. Common Law of the Subject. At the English common law, as we have seen, a farmer is not obliged to fence his lands at all. He is not obliged to fence against his adjoining neighbor nor against the public in the highway. And he may maintain the action of trespass against the owners of any cattle or other domestic animals which enter and injure his premises although they are entirely unfenced; for it is just as much a trespass for them to cross his invisible boundary line as to leap over the most substantial stone wall. (19 Johns., 385.) He must, of course, see to it that he restrains his own cattle, for he is in turn liable for their trespasses. He is not obliged to keep his neighbor's cattle out, but he must keep his own cattle in. In brief, at common law every one must keep his cattle on his premises at his peril.

This statement of the common law is necessary, because the common law is in force in many American States so far as it is not changed by statute. In some of the States, however, the common law is held never to have prevailed, not being adapted to the circumstances of the people.

2. Statute Law of the Subject. The legislatures of practically all the States have passed laws upon this subject of fences, which bear principally upon two points. They provide usually that partition or division fences between adjoining farms shall be maintained in equal shares by the adjacent owners; and they take from the owner of lands his right to sue the owner of trespassing cattle, unless the lands are enclosed with fences of legal height and strength.

The most succinct and accurate general statement of the fence law in America that the writer can make is that no one is obliged to fence his lands, unless his adjoining neighbor has gained the right either by agreement, prescription, or under the statutes above referred to, to have him maintain the whole or a portion of the partition fence between them. Another way of stating the same law is that the owners of domestic animals which enter and do damage to lands because they are unfenced, are liable for the trespasses, unless they can protect themselves by some agreement, prescription, or statutory obligation on the part of the complaining party to maintain a fence.

The statute law of this subject is voluminous, and there is lack of harmony in the provisions of the several States. We can not point out the differences nor even dwell long upon the main features of these statutes. Were we to go into details, this subject alone would fill the book. But every owner of land should inform himself in this regard concerning the statutes of his particular State. The statutes can usually be found with any justice of the peace, or at the township clerk's office. In most states there is a provision for keeping a copy of the State statutes deposited with some official, usually the township clerk, for the use of the township; and any person having need of them has a right of access to them there. This fact is alluded to because every one having occasion to look up any point of law should ascertain the statutory provisions concerning it from some official source. Do not depend upon this book or any book for them, because they are liable to change,

and do change from year to year, but go to your town clerk or justice of the peace and examine the statutes themselves.

3. Division Fences. Where adjoining owners wish to improve their lands, especially if they wish to use them for pasturage, it is necessary that there be a division fence between them. But as it would be foolish to require each to maintain such a fence, thus making two fences running parallel along the dividing line, there is, as above stated, statutory provision in the several States, requiring adjoining owners to maintain one division fence in equal shares. That is, each must build half the fence, and if they can not agree as to which half each shall build, or if either refuses to build his share, these statutes provide a method by which the respective portions to be maintained by each may be determined, and by which either may compel the other to build his share.

Of course adjoining owners may agree between themselves as to who shall build the division fence, and as to how such fence shall be built. Such an agreement is valid, notwithstanding the law; and while it remains in force it supersedes the law. In many States there is a provision that if such an agreement is put in writing and filed with the township clerk it shall become binding upon the parties always, and upon all subsequent holders of the land. Such a provision is a valid one, and the agreement in such case becomes in the nature of a covenant running with the land. (41 Wis., 671.)

A mere parol or verbal agreement of this sort is not, however, binding upon subsequent owners, and it will not bind the parties to it any longer than they wish to proceed under it. If either wishes to throw it up and proceed under the statute he may do so. (31 N. H., 241.)

One adjoining owner may, under certain circumstances, gain the right by prescription to have the other maintain the fence between them, but this is not of very frequent occurrence.

4. Fence Viewer's Duties. When one of two adjoining owners refuses to build his half of the partition fence, or when they cannot agree as to which portion each shall maintain, then the fence viewers may be called upon to decide the matter. The fence viewers are officers elected or appointed in each township whose duty is, when called upon, to assign to each adjoining owner his respective portion of the division fence, and to decide whether

or not any given fence, which may be in controversy, is a legal fence, whether or not it complies with the requirements of the law. The office of fence viewer is often vested *ex-officio* in some other officer. In many States the overseers of highways, the pathmasters as we call them, are by virtue of that office the fence viewers for their respective townships.*

Any land owner or occupier, whose adjoining neighbor refuses to build half the division fence, or with whom he cannot agree as to which portion they shall respectively maintain, may call in the fence viewers. Upon being so requested, the fence viewers, after viewing the premises, determine and assign the respective portions of the fence to be maintained by each. The assignment when so made and recorded with the proper officer, becomes binding upon the present and all subsequent owners of the land. (2 Wis., 14.) When the fence viewers have made the assignment, if either adjoining owner refuses to build the portion of the fence assigned to him, there is usually a means provided for compelling him to do so. Generally the other owner can go on and build the whole fence himself and can then recover from the owner who declines to build the cost of building half of it. And the same thing may be done in the case of a partition fence which is out of repair. Adjoining owners have the same rights and duties with respect to repairing and keeping up a partition fence as in the case of building one.

After the respective portions of the fence to be maintained by each adjoining owner have been determined, either by agreement or by action of the fence viewers, then neither owner can recover any damages for the trespasses committed by the other's cattle unless his portion of the division fence is in good repair and of legal height and strength. If the injured party has failed to build his share of the fence, or if he has failed to keep it in repair, it is presumed that the cattle entered because of such failure, and his right to damages is taken away because of his neglect of duty. If he can show that the cattle did not enter over his part of the fence, or that they entered notwithstanding the insufficiency of his fence, then he could probably recover damages. There is an early decision in Massachusetts to that effect. (4 Mass., 471; 6 Mass., 90.) In some States

* Such is the law in Michigan. The Michigan reader should carefully examine Chapter XXI of Howell's Statutes, which embraces the statute law of this subject, and refers, by foot-note, to the leading cases.—H. A. H.

the duty to repair division fences is laid indiscriminately on both adjoining owners. This has been held to have the effect of depriving each of his right to damages against the other for the trespasses occasioned by failure to repair. (8 Ala., 492.) Division fences may be put along the dividing line and may extend half way on each side of it; and they are, when built and maintained by each of the owners, the common property of both; but when the respective portions to be maintained by each have been duly assigned, then such portions belong to the owners who built them.

An owner of improved land is only obliged to fence against cattle which are lawfully in the adjoining field. (37 N. H., 331.) If the cattle of a third person break into or unlawfully enter an adjoining field and from there enter the first party's land, said first party can recover damages from the owner of the cattle, no matter whether the division fence is out of repair or is totally wanting. The division fence laws apply only as between adjoining owners, and third persons cannot take advantage of the provision depriving the owner who fails to maintain his fence of his action for damages. (29 Me., 282; 6 Mass., 90; 17 Mich., 417.)

5. Fence Law Applies only to Improved Lands. The statutes relating to division fences apply only to improved lands. They do not require the owners of uninclosed, unoccupied or wild lands to build and keep up division fences. (31 Wis., 194.) Nor can one owner or occupant, who improves his land, compel his neighbor who does not, to unite with him in the maintenance of a fence between them. Both parties must improve their lands in order to make the statutes apply. Of course one owner can not evade the law by leaving a strip of unimproved land along the line of the division fence, or by purposely making his fence a few feet inside of the dividing line instead of on it. (22 Iowa, 572.) Such dodges are too palpably evasive of the law to be effective.

In some States these provisions are held to apply to the occupants, and in others to the owners of improved lands. In Wisconsin, for example, it was held that a decision of the fence viewers requiring an occupant to erect or pay for a portion of the division fence was void, as the occupants of improved lands, unless they are the owners, are under no obligation to maintain fences. (19 Wis., 49.) While in other States the obligation to fence is laid upon occupants, no matter what their title; and it seems that in such case any occupant, no matter what his rights as to ownership

are, may enforce the law against an adjoining occupant (17. Wend., 320), if the latter has sufficient title to authorize him to construct the fence. (36 Mich., 417.)

6. When Division Fences not Necessary. The provisions for the maintenance of division fences are for the mutual benefit and protection of adjoining owners or occupants who desire to improve their lands. Whenever one owner does not improve his land, the necessity for him to contribute toward the maintenance of a division fence ceases. The obligation does not arise, at least, until he improves his land. Even after the respective portions to be maintained by each have been assigned and the fence has been built, either party may, in some States, withdraw from the arrangement. If he wishes to throw open his land and cease improving it, he may, on giving notice to that effect to the adjoining proprietor, remove his portion of the fence. (3 Wend., 142.)

Adjoining parties may also, by agreement, dispense with the fence between them; being for their mutual benefit only, no one can complain if they choose to do without it.

In both the above cases, or in any other case when the division fence has been dispensed with or never built, the common law prevails between the adjoining proprietors. Each is presumed to fall back upon his common law liabilities and to be satisfied with his common law protection. Each must keep his beasts upon his own premises, or become liable for the damage caused by their trespasses. (17 Mich., 417; 45 Ill., 76; 9 Ind., 290.)

When a division fence is thus dispensed with, the adjoining owners ought, as a matter of precaution, to make an agreement that neither shall be liable for the trespasses of his beasts upon the other's land.

7. Exterior or Road Fences. With respect to outside fences, we have seen that at common law there is no obligation on the part of land owners to maintain them. There is no obligation to maintain such fences imposed by the statutes of the American States. All that is done is to take away the right of action for trespass from such owners as fail to inclose their lands with fences, and this is done only in a portion of the States. Where it is done, however, or where under a general law the people of a township by vote allow cattle to go at large in the highways, or where as in Illinois, Iowa, Missouri, Oregon, and some other States, it has been held lawful for cattle and other domestic animals to go at

large, there the owners of land are left to protect their premises against the trespasses of such animals by such means as they may think best. They are in effect required to fence their lands if they wish to cultivate them. This subject is closely connected with that of cattle in the highway, which is treated in the next chapter, and to which the reader is referred.

If one had upon his premises any dangerous pit or miry spring, he would be required to either fence it or take such precautions as would prevent harm from it to other persons or their cattle. The fact that the owner must guard a dangerous place of that sort may occasionally add to the obligation of fencing, and it consequently is referred to here.

8. Railroad Fences. The statutes of many of the States require that railroad companies shall maintain good and legal fences on both sides of their tracks. Where there are no such statutes such companies are under no obligations to fence their roads. If cattle or other domestic animals enter because there are no fences they are trespassers, and if while there they are killed or injured by the cars, their owners cannot recover damages unless the railroad company is guilty of very gross negligence or intentional wrong. This is the general rule, and there are many cases in which it has been applied. (5 Denio., 255; 29 Me., 307; 17 Ill., 131; 19 Pa., 298.) Where cattle are lawfully in the highway, under provisions allowing cattle to run at large, and from there they stray upon the railroad and are killed, the rule is also applied. There can be no recovery of damages, because it is regarded as negligence for a person to allow his cattle to go at large in the highway in the immediate vicinity of a railroad, whether the railroad is fenced or not. (14 Barb., 364; 11 ib., 112.)

Where, however, there is an obligation to fence, there the rule of liability is changed. Until such fence is duly made the railroad company is liable for all resulting damage to live stock, and it in some States cannot show in defense any contributory negligence on the part of the owner of the live stock, the statute requiring fences being a police regulation, and the action for damages being based upon it, the negligence of the plaintiff cannot generally constitute a defense. (28 Mich., 510; 13 N. Y., 42; 30 Ind., 321.)

When the railroad company has built the required fence its liability then ceases, unless it is guilty of some other negligence. If the fence is blown down by violent wind, and before the company

has notice of it cattle enter and are injured without other fault on the company's part, the company is not liable. It is not obliged to keep a night patrol to see that its fences are not blown or broken down. (27 Ill., 55.) So if the fence gets out of repair without the company's fault, it is entitled to reasonable time in which to repair it, and if, before it has had reasonable time, injury results, there is no liability. (33 Ill., 289.) But the company is held to a high degree of diligence in all such matters. So, also, if some stranger wrongfully opens the fence, or if an adjoining owner carelessly leave the gate open, the company will be relieved from liability, if not itself grossly negligent. If cattle get upon the track, even unlawfully and wrongfully, the engine driver is not for that reason warranted in running them down and wantonly killing them. If he does so the company will be liable. (37 Ark., 562.) But the engineer is not necessarily required to stop his train or even slacken his speed if he reasonably believes that by blowing the whistle he will frighten the cattle off. (37 Ark., 593.)

Under the statutory provisions requiring railroad companies to fence their tracks, it is not necessary or even proper that the tracks should be fenced at all places. The statutes obviously do not require the enclosing of railroads at places where the public necessity or convenience demands that they be left open, as at the crossings of streets and spaces in front of mills, elevators, depots, or freight houses. (28 Mich., 510.) But under this exception companies have no right to throw open their tracks throughout the entire length of a city or village, as they often do, as the exemption only extends to places where it would be obviously improper and unreasonable to fence. (29 Ind., 471.)

While a railroad company which has failed to build or maintain its required fence cannot generally escape liability by showing that cattle injured or killed were unlawfully in an adjoining field, or negligently allowed to go at large in the highway (29 Barb., 64.), still a statute making railroad companies absolutely liable for such injuries under all circumstances would not be good law. Consequently a law in Alabama making railroad companies absolutely liable for all stock killed on the tracks was held to be unconstitutional. (66 Ala., 85.)

9. What is a Legal Fence? The statutes of the several States define in most instances specifically what shall be deemed a legal and sufficient fence. The provisions are far from uniform,

and, being so numerous, of course cannot be given here. In some States, as in New York, the electors of each town may, by vote, decide for themselves as to how fences shall be made and what shall be deemed sufficient, though it has been held in that State that it is a part of their common law that adjoining owners may erect crooked or Virginia fences as division fences, placing them equally on each side the line. (18 Barb., 397.)

In Michigan all fences four and one-half feet high, and in good repair, consisting of rails, timber, boards, or stone walls, or any combination thereof, and all brooks, rivers, ponds, creeks, ditches, and hedges, or other things which shall be considered equivalent thereto in the judgment of the fence viewers within whose jurisdiction the same may be, are deemed legal and sufficient fences. *

In Missouri a legal fence may be a hedge, or any "fence sufficiently close, composed of posts and rails, posts and palings, posts and planks, posts and wires, palisades, or rails alone laid up in the manner commonly called a worm fence, or of turf with ditches on each side, or of stone or brick." Hedges must be four feet high, post fences four and one-half feet high, turf four feet high with ditches on each side three feet deep in the middle and three feet wide, worm fences must be five and one-half feet high to the top of the rider, or if not ridered five feet to the top of the top rail, and must be locked with strong rails, poles, or stakes. Stone or brick fences must be four and one-half feet high. (Laws, Mo., 1877, p. 8.)

For detail information concerning the requirements of a legal fence in any particular State, the reader is referred to the statutes of that State, to be found, generally, with any justice of the peace or township clerk.

* See Howell's Statutes, Vol. 1, page 262.

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CHAPTER XVII.

CATTLE IN THE HIGHWAY.

1. A Question of Expediency.

2. A Question of Right.

3. Summary.

1. A Question of Expediency. Whether it is proper and expedient to allow cattle and other domestic animals to roam at large and pasture in the public highways of the country, is a question that has occasioned much discussion among farmers. On one hand it is claimed that to allow them there necessitates the maintaining of strong exterior fences, the constant watching of gates, the endless annoyance of persons using the roads, besides occasional injuries to crops in spite of all precautions. In addition to these it is claimed to be an injustice to adjacent proprietors who own really to the center of the roads, and who are justly entitled to every benefit and use that can be got out of them, subject only to the public easement or right of travel and the right to repair. On the other hand it is claimed, with possibly equal force, that were cattle not allowed to depasture the highway, the grass and other herbage growing there would be practically lost; that it is no detriment to the adjacent owner to have such herbage grazed off, as he would never utilize it himself; that he would be obliged to maintain exterior fences anyway (because cattle, being lawfully driven along the roads, would otherwise escape into his fields and injure his crops, and the owners of such cattle would not be liable for such injuries if the cattle escaped without their fault); and further that it is a great benefit to community and especially the poor to have cattle thus feed upon what would otherwise be lost,—many a poor widow is thus enabled to keep a cow,

and so support herself and family, who otherwise might be reduced to want. It is asserted further that in many communities, especially those but newly settled and yet undeveloped, it is a matter of absolute necessity that domestic animals have the freedom of the highways and neighboring uninclosed lands. There is not enough land enclosed in many such communities to pasture half the cattle, and indeed it is not possible for farmers to enclose more than they actually cultivate.

These two opinions have led to a diversity of legislation upon the subject, and consequently to a lack of uniformity in the law of the matter in this country at the present time.

2. A Question of Right. As has been repeatedly stated, it is at the English common law a trespass for cattle to roam unattended or pasture in the highway. Every man must keep his domestic animals upon his own premises at his peril. This may be said to be the fundamental law of this country, except so far as it is modified by statute; and the validity of such statutes as deliberately provide for the running at large of domestic animals has been seriously questioned. However there are such statutes in nearly all the States, as only a few of the eastern and older States have seen fit to retain or return to the common law provisions upon this point, and while we cannot go into details, we shall endeavor to so group the general outlines of these statutes that the reader may get a fair idea of their scope and effect, and for particulars may refer to the detail provisions in force in his own State.

Remembering the fundamental right of every man, over whose farm a highway runs, to every use of the highway which does not interfere with the public right of travel, we find that this right is guaranteed and protected only in Massachusetts, Maine, New Hampshire, and possibly a few other of the older States which have become more or less completely settled and developed. But even in these States there does not seem to have been a case reported in which damages have been awarded simply because cattle trespassed upon land in the highway. It has been held only that it is unlawful for them to be there, except for purposes of travel, and if they are there unlawfully and escape into adjoining land because the fence is deficient or altogether wanting, their owner is liable for all the damage they cause. (4 N. H., 516; 19 Johns, 385.) So stringently has the rule, that every man must keep his cattle upon his own premises, been enforced, that it was held that where a

stranger roaming over one's farm left the gate open and his cattle escaped into the highway, and from there went into another's corn field, that the owner was responsible for and must pay the damages, though not himself at fault. (30 N. H., 143.) But this was rather an extreme case.

3. Statutes on the Subject. The most common statutory modification of the common law rule on this matter is that which takes away the action of trespass from every land holder who does not erect and maintain sufficient exterior fences about his land. These statutes do not legalize the presence of cattle in the highway, but they simply deprive the farmer of his remedy for trespasses by cattle unless his lands are fenced. The validity of these laws does not seem to have ever been questioned, though they have been very generally enacted in the Middle, Western, and many Southern States. The people seem to have acquiesced in them without complaint, for the reason, possibly, that they have not been put thereby to much extra trouble or expense. Exterior fences are practically necessary any way. It is lawful to drive cattle along the road, and if without the owner's fault they break away and injure adjoining crops, he is not responsible, if he drives them out as soon as he reasonably can. (114 Mass., 466.)

Another modification of the common law rule, which has been adopted in many of the Middle and Western States, is that embodied in statutes providing that the electors of any town may decide by vote whether cattle shall be allowed to run at large in the highways.

The validity of these provisions has been questioned in several instances, though as a rule they have been accepted and acted upon by the people without serious objection. In several New York cases, however, their propriety has been doubted. In *Tonawanda R'y Co. v. Munger* (5 Denio, 253) the court say that the legislature has no power to authorize towns to vote that cattle may depasture the highway unless compensation is made to the owner of the fee of the way; otherwise the towns would be giving away something that they do not own, and depriving people of their rights without paying for them. In another case (4 Barb., 56) the court held incidentally that the power of the town in this direction could not be extended beyond allowing the adjacent owners to graze their own cattle upon such portions of the highway as

they respectively own. Such a construction of the law of course defeats its main purpose, which is to benefit the poorer inhabitants rather than the great land owners. In still another case a contrary view was taken, it being held that such power could be authorized, because when the highways were laid out and paid for, compensation was made for all rights and interests which the public could make use of under the law, and the right of pasturage being provided for by law must have been contemplated and included when payment was made, and hence has become a public right like that of travel. (19 Johns, 385.) In Michigan there is a provision that the board of supervisors may by resolution regulate the time and manner in which domestic animals may run at large, but the supreme court of that State question its constitutionality. Whatever rights the public may have in the highway, a common pasturage is not among them. (39 Mich., 365.)

In some States where the common law on this point has been thus modified, and where it may be said to have lapsed by reason of the universal custom of disregarding it, statutes have been enacted providing, in express terms, that it is unlawful for domestic animals to roam in the highways. The effect of such statutes is presumably to restore the incidents of the common law. In Michigan, for instance, there is a statute providing "that from and after the year 1867 it shall not be lawful for cattle, horses, sheep, and swine to run at large in any highway of this State." * The act is made inoperative in any county in which the board of supervisors see fit, by resolution, to make it so. The act provides that it shall be the duty of all overseers of highways to seize and take into custody all such animals found at large in their respective districts contrary to the provision of the law; also that it shall be lawful for any person to seize and take up any such animals found at large in the highway opposite land owned or occupied by him, or found trespassing anywhere on his premises. When so taken up such animals are to be advertised for sale, and, if not redeemed by the owner within a certain time, are sold, and from the proceeds compensation is made to the person taking the animals up for his trouble and for any injury that he may have suffered. The balance, if any, is turned over to the township treasurer for the use of the town. The statute has been pronounced constitutional by the supreme court. (39 Mich., 451.)

* See Howell's Statutes, § 2106.

3. Summary. To put this matter into a single paragraph, it may be said: In the Eastern States generally it is a trespass for domestic animals to depasture the highway, and unquestionably an actionable trespass for them to enter upon land from the highway whether such land is fenced or not. In the Middle and some of the Western and Southern States, while their presence unattended in the highway is probably an intrusion upon the rights of adjacent land owners, there are provisions for the electors of towns to allow them there, and while such provisions are in theory not valid, still the people have in the main submitted to them without serious complaint and without definitely establishing their invalidity in a single State. In many of the States included in the last mentioned group, and in the newer States generally, there are provisions which, while not expressly permitting the presence of cattle in the highway, deprive the farmer who fails to fence his land along the road of his remedy against the owner of cattle that escape therefrom and injure his crops, which amounts practically to about the same thing. Finally there is a growing disposition, as the country becomes developed, to return to and enforce the common law requirement that every man shall keep his domestic animals upon his own premises.

CHAPTER XVIII.

FARMER'S LIABILITY FOR THE ACTS OF HIS ANIMALS.

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| 1. General Rule as to Trespasses. | 6. Keeping Wild Animals. |
| 2. Exceptions to General Rule. | 7. Injuries by Dogs. |
| 3. Injuries by Vicious Animals. | 8. Dog Laws. |
| 4. Owner Liable if Negligent. | 9. Dog Fights. |
| 5. Contributory Negligence Excuses. | 10. Who Liable for Injuries. |

1. General Rule as to Trespasses. We have seen that it is the owner's duty to keep his domestic animals upon his own premises. If he fails in this duty, and they escape upon other people's premises and there do injury, it is a trespass for which an action will lie and for which damages may be recovered.

2. Exceptions to General Rule. Like all legal rules, this has its exceptions, and the principal one is that where the trespass is committed because of the failure of the injured party to maintain some fence, which he is under legal obligation to maintain, either by force of some statute, or some agreement, or some prescriptive right, then the right to recover damages is cut off. Or where the trespass is committed without any possible fault on the part of the owner, as where he is driving his cattle lawfully along the highway, and they escape into adjoining lands in spite of his precautions to the contrary, and he takes diligent and speedy steps to get them back, then there is no liability. This matter of trespasses by animals has been so fully considered indirectly in the last two preceding chapters that it seems proper to drop it here and proceed at once to the more important matter falling under the title of this Chapter, namely:

3. Injuries by Vicious Animals. For the vicious acts of domestic animals, like kicking, hooking, or biting, the owner is liable, but his liability depends upon some knowledge on his part of their disposition or propensity to do such things, and upon his failure to take such precautions to prevent an injurious exercise of that propensity as such knowledge would cause a prudent man to observe.

From this statement of the law, we see that the liability is really simply a question of negligence.

4. Owner is Liable if Negligent. If a man owns or has charge and keeping of any animal which he knows has a disposition to do harm, it is his duty to so restrain that animal or to take such reasonable precautions as will prevent others from being injured by it. If he fails of this duty, and the injured party is in no way at fault, then he is liable for such injury as is directly traceable to his neglect. Some knowledge of the animal's evil propensity is of course necessary in order that the owner may be put on his guard. And, as to what will constitute sufficient knowledge or notice in this respect, it is said that it must be such as would satisfy a reasonable and prudent man. It is not necessary that the animal should have previously, to the owner's knowledge, committed mischief, but if it has exhibited a disposition or propensity to do so it is enough (5 Strob., 196), though if, on a single previous occasion the animal has committed a vicious act and the owner knows it, that is said to be sufficient to charge him with liability. (25 Conn., 92.) Still the notice must be of a propensity to do the act which did the harm. Notice that a dog will worry sheep is not notice that he will attack a person, nor is notice that a horse will run away notice that he will kick or bite (66 Ill., 309), though it is held that knowledge that a bull attacks and gores other animals is sufficient warning that he would in like manner injure persons. (27 Pa. St., 331.)

Consequently if one owns an ugly bull it is his duty to so restrain as that it cannot injure anybody. But even if he fails in this, and somebody else, knowing the bull's evil nature, recklessly puts himself in its way, and so is injured, there is no liability.

5. Contributory Negligence Excuses. It is obvious that it would not be right to allow one to recover damages for an injury which he himself helped to bring about. So if one needlessly ventures too near a bull which he knows is ugly or a horse which

he knows will kick, he can recover no damages if he is injured, though the owner was guilty of gross negligence in allowing the animals to be unrestrained. But if a little child incapable of observing and guarding against danger, or too young to be guilty of contributory negligence, goes near and is injured, without fault on the part of its parent or guardian, then the owner is liable. (4 Allen, 431.) The owner should not have left it unrestrained in any place where small children would be likely to come near it.

It has been repeatedly held that it is no defense, to an action for damages caused by a vicious animal, that the injury complained of was committed on the owner's premises and that the person injured was at the time a trespasser (17 Wend., 496); unless the trespass amounts to contributory negligence it cannot be set up as a defense; for a man cannot defend his premises by such means as a ferocious animal, any more than by setting man traps or spring guns. (14 Conn., 1.) If a man keeps a ferocious bull upon his farm and allows it the freedom of his pastures, and persons casually crossing the farm, with no other fault or carelessness on their part save that of being upon the land without permission, are injured by the bull, the owner is unquestionably liable (3 C. & P., 138); or if one keeps an ugly and savage dog, and persons hunting in his woods, even on Sunday, are bitten by it, he will have to pay for the injury, though he did not set the dog on. (17 Wend., 497.)

Doubtless one may defend his premises against burglars by such means as a savage dog; but if the dog bites any one coming to the house on any innocent purpose, even in the night time, the owner will be liable. One may drive trespassing cattle off his premises by setting a dog upon them, and he will not be liable unless the dog unnecessarily worries or seriously injures them (9 Mich., 158; 23 Vt., 236), nor will he be liable if after being driven off the cattle stray away and are lost. (18 Pick., 227.) But if he were to kill the cattle simply because they were trespassing, he would be liable for their value (4 Tex., 492); and the same would be true if he killed hens simply because they were in his garden (107 Mass., 406), or dogs simply because he thought they had been interfering with his hen's nests. (5 Ind., 216.) The law affords him another and more civilized remedy in all these cases.

There are many cases holding that if a man turns his animals into the highway he becomes liable for all the damage they do there, no matter whether he knows they have vicious dispositions

or not. (4 Allen, 444.) Aside from the illegality of so doing, the act is deemed gross negligence, and such as will of itself charge the owner with liability. (39 N. Y., 400.) In one case this doctrine was carried so far that a man who turned his horse to feed in a public place, where some little children were playing, one of whom began switching the horse and was by it kicked and killed, was convicted of manslaughter. (10 Cox., 102.) But this extreme doctrine can not be said to be the law of America at the present day, as the weight of authority vests the liability only upon some negligence—or failure to exercise such care and precaution as a prudent man would under the circumstances. Still it is not safe to say that where breechy animals break into a field in spite of the legal fences that may enclose it, that the owner is not liable for anything more than the herbage they destroy if he does not know them to be vicious. There are so many cases holding the owner liable under such circumstances, not only for herbage destroyed, but for injury done to other stock, like goring, kicking, etc., and this, too, irrespective of his knowledge of the viciousness of his beasts, that it may be said they constitute this class of cases an exception to the general rule above laid down. (5 N. J., 815; 7 W. & S., 367; 16 Conn., 200; 44 Me., 322.)

Some of the law writers and many of the older decisions hold that the mere keeping of an animal which the owner knows to be vicious and dangerous, is of itself in theory unlawful; and upon this ground they hold such owners liable whether they are guilty of any other negligence or not. (3 C. & P., 138.) But this can not now be said to be good law. It is not unlawful to keep vicious animals. If one has such animals he simply must take such care, and observe such precaution as a reasonable and prudent man would to prevent their doing injury. And if in spite of these precautions the animals escape and do harm, there is then no liability.

6. Keeping Wild Animals. The keeping of wild animals like lions, tigers, bears, etc., was formerly regarded as unlawful and the owner was held responsible for any harm done by them without any proof of negligence on his part. (9 Q. B., (N. S.) 101.) But this, like the keeping of vicious domestic animals, can not longer be regarded as unlawful. The necessities, tastes and habits of modern civilization have changed this, and the keeping of such animals for the entertainment and instruction of the people is now

not only lawful but is a recognized legitimate business. And all that can now be required of the persons who keep such animals for any such legitimate purpose, is the exercise of that careful precaution and watchfulness which the necessities of the case demand. (Cooley on Torts, p. 350.) They must of course take note of the natural propensities of such animals to do harm, and of any peculiar individual viciousness they may manifest, and they must provide such safeguards against the injurious exercise of these dispositions as the reason of a prudent man would dictate. Having done that, community must be satisfied. They can not be held to be insurers of the lives and safety of all persons against every possible harm that their beasts may do, for if despite their great care, and notwithstanding their ample precautions, such animals manage to escape from them and do harm, the case must be referred to the category of accidental injuries for which no action will lie and no damages can be recovered. (8 Barb., 360; 24 Mo., 199.)

Possibly if a farmer should attempt to keep a lion or panther on his farm, this more liberal doctrine would not be applied. It would be so obviously frivolous and foolhardy for him to undertake such a thing that he ought to be held an insurer against all injuries resulting from it, and there would be no impropriety nor injustice in enforcing the old common law liability upon him. But in the case of one legitimately in the business—like the proprietor of a menagerie or zoological garden—nothing more can be properly required than the exercise of adequate care and prudent caution.

Nor can it be longer held unlawful to exhibit such animals under certain proper circumstances in the public highways; the frequency of menagerie processions—the propriety of which is so generally acquiesced in and applauded by the public—having modified the stringency of the old doctrine that it is unlawful to bring such animals into the public streets. Consequently when in New York State a horse took fright at an elephant, which was being driven along the highway, and injury resulted, the owner of the elephant was held not to be responsible. (38 Barb., 14.)

7. Injuries by Dogs. As almost every farmer keeps one dog, and some farmers two or three, it will be well to look a little further and examine a little more particularly than we have so far done as to their standing in the law. Primarily, and in the absence of statutes, they stand upon the same legal footing as other

domestic animals, so far as injury done by them is concerned. Their owners are liable for, and only for, such damages done by them as from their general nature and individual character and disposition they may be expected to do. A dog which has exhibited no vicious propensity can not be reasonably expected to do any harm by being allowed to go at large. Consequently it is not negligence to give a right minded dog the freedom of the master's premises, nor is it an actionable trespass if the dog, of his own accord, crosses or enters upon the premises of a neighbor. But when the dog exhibits any vicious disposition or evil propensity, then an additional duty at once devolves upon its owner. That duty is to take adequate steps to prevent any harm from resulting from such disposition or propensity, and on failure to perform such duty, the owner becomes liable for the injury if the injured party is blameless. If the owner is notified that the dog has the habit of worrying sheep, or that he will attack persons or animals, he becomes liable from that time, if he keeps the dog, for all such damage as he may do. (75 Ill., 141; 19 Pa. St., 359.)

8. Dog Laws. It is not safe to state that the law as above laid down is the law of this country generally, because there are statutes in many of the States fixing the liability of owners of dogs for injuries done by them. We can not analyze or even group these statutes because they are too numerous. Their most common provision is to remove the necessity of proving *scienter*, that is, that the owner of the dog which did the damage knew of the dog's evil propensity. In the absence of statute such proof is necessary, but our legislators seemed to have believed that every one should feel the force of good Dr. Watts's quaint couplet:

"Let dogs delight to bark and bite
For 'tis their nature to."

Consequently it has been quite generally provided that the owner of a dog shall be responsible for its bites and other vicious acts, whether his attention has been called to any particular propensity in that direction or not. Another very common provision of these dog statutes is to make it the duty of every one, as soon as he finds that his dog has become savage and dangerous, or has become addicted to sheep stealing or sheep worrying, to kill it at once. The mere keeping of such a dog is made unlawful, and the fact that the owner endeavors to keep it so restrained that it can

not do harm will not protect him. By keeping the dog he assumes all risks, including possibly that of being prosecuted under these statutes for so doing. In some of these States the statutes provide for the recovery of double damages by the owners of stock injured by dogs. Other statutes provide for a remedy against the town for injuries to sheep by dogs whose owners can not be ascertained; still others that where the dogs of several proprietors unite in a sheep-stealing expedition, each owner shall be liable for all damage done. But the details of these statutes, or the provisions of those for each particular State, can not be here given. For such information the reader is referred to the statutes of his own State.

9. Dog Fights. Question has sometimes arisen as to who is responsible for the consequences of a dog fight. Dogs are notoriously liable to fall to fighting just for the sake of the thing itself, with apparently no particular provocation or just cause. They often thus do great damage to each other, not infrequently fighting to the death. They are now, with us, unquestionably the subjects of property, and their owners can recover their value if they are unlawfully killed. It is therefore not a frivolous question to ask who, if any one, shall be liable when they kill each other. The scarcity of reported cases in point upon the matter renders it difficult to speak with certainty; but it is probably safe to say that the general rules of liability applicable to the case of the keeper of vicious animals generally apply to that of the owner of a dog which viciously kills or injures another dog. If a man owns a dog having a propensity to wantonly attack and kill other and especially smaller dogs, it is his duty to guard against the injurious exercise of that propensity. Still it cannot be said that because a dog is unwilling to have other dogs trespassing upon its master's premises it is therefore to be regarded as a dangerous animal. To attack and drive off dogs suffered to go at large to the annoyance and danger of the public might be a virtue. It is at least a very different thing from attacking persons who are trespassers, and the cases where dogs have attacked human beings who were trespassers, and the owners were held liable are not applicable. (22 Barb. 506.) Owners of valuable dogs must take care of them in proportion to their value, and keep them upon their own premises or at least under their own eyes. If they allow them to go at large they must take the risks of such dog fights as they may get into. The law can not attempt to go into the merits of a dog fight and say

which dog is blamable and which is not. The proprieties of dog conduct cannot be determined by the judicial tribunals of the land. Consequently if dogs get to fighting without fault on the part of the masters there is no liability for the consequences. In Michigan there was a statute requiring the owners of all dogs to procure licenses for them and keep them collared, and making it lawful for any person to kill any dog found going at large not licensed and collared. While this statute was in force a large dog meeting a small but valuable one, and observing that it was not collared as required, proceeded to execute the law upon it by killing it forthwith. The owner of the small dog brought suit against the owner of the large one who endeavored to shield himself under the provision of the statute making it lawful to kill unlicensed dogs. But the Supreme Court of that State said (34 Mich. 283) that a statute under which a party in so summary a manner is to be deprived of his property by having it destroyed cannot be extended by such a construction. The power of the legislature to pass the act was not questioned, but it was held that it must be strictly construed. If it allowed *persons* to kill unlicensed dogs the authority could be held to extend to animals also.

10. Who Liable for Injuries. The duty of guarding against injuries by vicious animals rests upon the one having the care and custody of them, whether he is the owner or not. (16 Ind., 251; 32 Cal., 102.) If a farmer takes horses or cattle to pasture he becomes liable for their trespasses and for their vicious acts. And the same is true of dogs. They are presumed to belong to the person who harbors or keeps them, and such person is liable as their owner. (3 Allen 191.)

CHAPTER XIX.

INJURIES BY DOMESTIC ANIMALS.

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| 1. Legal Remedies for Injuries by Animals. | 5. Damages Done by Chickens and other Fowls. |
| 2. Remedies for Trespasses. | 6. Remedy for Vicious Injuries. |
| 3. Impounding Cattle. | 7. When Vicious Animals may be Killed. |
| 4. Turning Trespassing Cattle into the Highway. | |

1. Legal Remedies for Injuries by Animals. When a wrong has been committed, through the agency of a domestic animal, there are several ways in which it may be righted. In the first place it may be forgiven. We are admonished by the good book to forgive our neighbor's trespasses, and although it says nothing about forgiving the trespasses of his breechy cows or long nosed pigs, I know of no Christian grace more becoming a rural gentleman, or more essential to suburban peacefulness, than that of clemency in this direction. Many a bitter country quarrel, with all its black accompaniment of vindictive acrimony, has ensued because of a little lack of forbearance, when, for the fourth time within an hour, perchance, one has rushed out on a hot summer afternoon to drive his careless neighbor's pigs out of the potato patch.

Still there are times, unquestionably, when forbearance certainly ceases to be a virtue, and when not only propriety, but duty and necessity compels one to proceed to extreme measures. Our progress towards a higher type of agriculture, towards rural order and tidiness, and proper respect for property, is aided often by people taking occasionally a bold stand upon their legal rights. When the time arrives therefore to do so, it becomes necessary to know not only those rights but the proper remedies for an infringement of them.

2. Remedies for Trespasses. For the trespasses of domestic animals, that is for their unlawful breaking into or entry upon lands, their owner or "agister"—as the person charged with their keeping is called—may be proceeded against by a suit at law in the action of trespass for a recovery of the damage done. In such a suit, if successful, a judgment may be had against the defendant for the amount of the damages and costs. But this remedy will be found in many instances to be ineffectual. The defendant may be pecuniarily irresponsible, the very cattle that committed the trespass may be exempt from execution, and consequently the judgment can never be collected. Or it may not be known to whom the trespassing animals belong, and the difficulty of ascertaining may, in many cases, cost the injured party more than the damages amount to; or if this be known, and a suit for damages be instituted, such suit will not prevent another trespass the next day, and hence another suit may be necessitated. For these and other reasons the law has long afforded the farmer a more summary and unceremonious method of relief for trespasses by domestic animals, namely, that of distraining them and impounding them in the town pound.

3. Impounding Animals. When domestic animals, such as cattle, horses, sheep, or swine, unlawfully break into and enter upon one's lands and there do injury, they may generally be impounded in the town pound and there be detained until their owner pays the amount of the damage they have done. This is now purely a statutory remedy, the old common law method of taking cattle *damage feasant* having been superseded, and great care must be taken whenever the proceeding is made use of to conform strictly to the terms of the statute authorizing it. Being an *ex parte* proceeding, the owner of the animals having little or no voice in the matter, the letter as well as the spirit of the law must be observed.

The varying details of the statutes regulating this method in the different States cannot, because of their length, be given here. Reference must be had to the statutes of the State in which the reader lives, before he takes any steps in the matter, for if anything is omitted, or wrongly done, the whole thing may fail. (35 Ill., 417.) The general outlines of the method are as follows: When any person finds any horses, cattle, sheep, swine, goats, or asses (in Mass. hens also) unlawfully upon and doing damage to his

premises, he may at once drive them to the town pound, leaving with the pound keeper a memorandum in writing, stating the cause of the distraining and the sum demanded for the damage done by the beasts. If the owner comes for them he may have them on paying said amount and the poundmaster's fees, etc. If he does not come within twenty-four hours, notice must be given to him or left at his house, giving a description of the beasts and the time place and cause of impounding. If the owner is not known or cannot be found such notice must usually be posted in three or four conspicuous places in the township, and also published in some local newspaper. If the owner does not then come and pay the amount within a specified time, the animals are advertised and sold, and from the proceeds payment of the damages is made to the injured party, and the balance put into the town treasury. If the owner comes and is dissatisfied with the amount claimed by the person impounding, the just amount of damages may be determined by two discreet persons appointed and sworn by a justice of the peace. If the amount so determined is not forthwith paid, the animals are advertised and sold at auction. The proceeds of the sale, after paying the damages, fees, and expenses, are turned over to the township treasurer for the use of the owner of the beasts, who may get them any time within two years. If the beasts escape from the pound, or are rescued by the owner, the poundmaster may retake them whenever and wherever he can find them; and in case they are forcibly rescued, the owner is subjected to a heavy fine.

In many States there is a provision that whenever one's beasts are distrained and impounded he can bring the action of replevin against the person distraining, on the trial of which cause the damages sustained by the defendant may be ascertained and judgment given him therefor, together with the costs and expenses, which judgment must be paid before the beasts are delivered; or if they are delivered before judgment, a bond must be given to secure payment of such damages and costs as are awarded.

4. Turning Trespassing Beasts Into the Highway. Another way in which a farmer can proceed when he finds animals trespassing upon his land is to quietly turn them out into the road. It is lawful for him to do this, and he is not responsible to their owner if they then stray away and are lost (18 Pick., 227); nor will he be liable if they there meet with an accident and are

injured. (32 Pa. St., 68.) Nor if they there do injury to other animals or persons in the highway will he usually be responsible.

In driving cattle off from one's premises he may use a dog to hasten their departure, and he will not thus render himself liable if the dog does not unnecessarily worry them or do them bodily harm. (23 Vt., 236; 9 Mich., 158.) But he will not be justified in inflicting injury upon them because of their trespasses; nor in setting a ferocious dog upon them. In Indiana a man set a large fierce dog upon a mare which had jumped over a secure fence into his cornfield. The dog so chased the mare that she ran against a snag and was injured so that she afterward died. The court held the man liable, and he had to pay the value of the mare (6 Blackf., 258.) Nor can one set traps or spring guns for trespassing animals to fall into or be injured by without being liable if they are so injured, and as we have seen, he cannot ever take their lives merely because they are trespassing. (2 E. D. Smith, 90.)

5. Remedy for Damage Done by Fowls, etc. The above remark applies also to trespassing chickens, custom to the contrary notwithstanding. One cannot shoot his neighbor's hungry hens because they keep coming upon and scratching up his newly made garden. In one case in Connecticut a man who had been sorely pestered by the trespasses of his neglectful neighbor's chickens, prepared Indian meal mixed with arsenic and scattered it upon his land, having first informed his neighbor of what he was going to do. The neighbor still neglected to confine his fowls and ten of them ate of the meal and died. The man, after paying the expenses of carrying the case to the Supreme Court of the State, had to pay the value of the fowls. (14 Conn., 1.) There are other cases of like import. The proper remedy is an action for damages. The law for impounding does not usually include fowls.

6. Remedy for Vicious Injuries. The usual legal remedy for damages caused by the vicious acts of domestic animals, is an action *on the case*, as it is called, for damages. This is the action for all injuries which result from the negligence of the defendant in not properly restraining his animals. The action is sometimes brought for the recovery of a penalty instead of damages, as where a penalty is provided by law for the doing or omitting of some act which has resulted in the injury of the plaintiff. For example there are, in many States, statutes providing that the owners of

bulls, stallions, rams, and boars shall keep them within their inclosures at their peril, and that they shall forfeit the sum of \$10 or \$20, or some other sum for every failure to do so. This penalty is usually made recoverable by the owners of any cows, mares, sheep or swine that may be damaged in consequence, in addition to such damage. And here it may be remarked that aside from any statutes upon the subject, the owners of male animals, such as are above referred to, are under obligation to guard against injury resulting from their peculiar masculine propensities. A failure in this duty is such negligence as generally renders them liable for the resulting injury. (26 Ind., 334.)

7. When Vicious Animals may be Killed. Vicious animals may sometimes be lawfully killed, and often under circumstances where their owners could not be sued. Any person may kill a mad dog at any time or place, or a dog that he has good grounds for believing mad, or that he knows has been bitten by a mad dog. (26 Vt., 638; 21 Wend., 406; 27 Ala., 480.) So a savage and vicious dog actually found doing mischief may be killed whether the owner knows of its disposition or not. (13 Johns, 312.) A dog caught in the act of killing or worrying sheep may be killed on the spot (52 Bark., 15), but the mere fact that the dog is chasing cattle will not of itself justify the owner of the cattle in killing it. (4 Cow., 351.) It has been held that a dog which comes prowling around one's house at night, howling and annoying the family, may be killed. (23 Wend., 554.)

Animals which are regarded as property at common law—such as cattle, horses, sheep and swine—can not generally be killed, however vicious or dangerous they may be, unless it is absolutely necessary to protect human beings, or to protect more valuable property, (31 Conn., 121; Cooley on Torts, 346); and as we have seen no domestic animals can be killed merely because they are trespassing.

CHAPTER XX.

NUISANCES ON THE FARM.

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| 1. What are Nuisances. | 8. Discharge of Water. |
| 2. Kinds of Nuisances. | 9. Ponds, Sloughs, Swamps, Etc. |
| 3. Encroaching upon a Highway. | 10. Diseased Cattle, Etc. |
| 4. Dangerous Excavations, Etc. | 11. Careless Setting of Fires. |
| 5. Old and Unsafe Structures. | 12. Legal Remedies for Nuisances. |
| 6. Overhanging Trees. | 13. Abatement of Nuisances. |
| 7. Cesspools, Privy Vaults, and
Filthy Sewers. | 14. Injunctions. |
| | 15. Action for Damages. |

1. What are Nuisances. A not uncommon liability, under which some farmers are placed, is that of causing or maintaining a nuisance upon their farms. Though it is difficult to state in concise terms what a nuisance is, the popular idea of it, namely, something which annoys and disturbs people, is not far from legally correct. Judge Cooley says it is "anything done or permitted which injures or annoys another in the enjoyment of his legal rights." (Cooley on Torts, 565.) This definition may include some things which are not nuisances, but is as good as can be given. Nuisances often consist of such uses of one's own property as cause inconvenience, discomfiture, or harm to others.

2. Kinds of Nuisances. Nuisances are public or private. The former injure the community at large, and are punishable by indictment, that is by a criminal proceeding brought in the name of the people; the latter are such as result from the violation of private rights and do damage to only one or a few persons. The nuisances most likely to be met with in rural communities are encroachments upon and obstructions of public highways, dangerous places near highways, rickety and unsafe structures, overhanging trees, discharge of surface waters, percolating filth, cess-pools, slaughter-houses, diseased stock, dangerous animals, etc., etc.

Who Responsible For. Any person who creates or keeps up a nuisance is liable to any one who is injured or damaged in consequence, and he may be subject to indictment if the nuisance causes general injury to the public. The liability generally rests upon the one who has possession and control of the premises upon which the nuisance is situated, though there are a few instances in which a person may be liable for a nuisance which he has created upon the premises of a third party, though he has no right to enter and abate it. (7 M. & W., 456.) As between landlord and tenant the tenant is presumptively responsible for any nuisances that may exist upon the leased premises (59 N. Y., 28), though the facts when shown may remove this presumption and show that the landlord is the proper party to proceed against. (53 Ind., 21.) When the tenant covenants to keep the premises in repair he becomes liable for any nuisances that may exist or arise upon them. (115 Mass., 86.) When a person comes into possession of premises upon which a nuisance exists, either by purchasing or leasing them, he is not liable for the continuance of the nuisance until his attention has been called to the matter and he has been requested to abate it. The injured party cannot bring suit without first requesting the owner to abate the nuisance, nor can he recover damages for injuries occasioned by a nuisance which the owner did not know of. (13 Conn., 307; 51 N. Y., 573.)

3. Obstructing or Encroaching Upon a Highway. If the farmer puts his road fence outside of the line of the street it is a nuisance. (37 Barb., 301.) So also if he builds a building which extends over the street line. If the building is just upon the line and in its second story there are bay windows or verandas projecting out into and over the street they are not necessarily nuisances unless they interfere with travel in the street. The same is true of trees overhanging the highway. The overhanging limbs are not nuisances unless they obstruct travelers; though if the limbs were dead and liable to fall and injure persons in the street they would be nuisances. It has been held that a building so erected that its roof overhangs the street, so that rain, snow, and ice descending therefrom may fall upon and injure persons or property lawfully in the highway, is a nuisance. The owner of it is liable for all damages that may be thereby caused. And it makes no difference that the owner is not in possession, or that he has no right to enter and remove the ice and snow that may accumulate.

The roof itself in that position is a nuisance. (55 N. H., 55.)

As stated in the chapter on highways, persons traveling with ordinary care along a highway have the right to absolute safety, not only against accidents from defects in the street, but from obstructions there, and insecure objects placed above or near the street. (101 Mass., 251.) Gates swinging out into the street have been held to be nuisances if left open. No harm might ever come from them in quiet country roads, still it would be better for farmers to have their gates open in upon their own land. Leaving anything in the road that unnecessarily obstructs public travel is a nuisance. Thus leaving logs or wood piled there, as we often see it in the country, is unquestionably a nuisance. (6 Cow., 189.) To leave a loaded wagon, or an empty one, standing over night in the road in front of one's house, or anywhere else in the road, is a nuisance. To drive in the highway with an unreasonable or outlandish vehicle, or with an unwarrantable load is a nuisance. (3 Salk., 183.) To so drive in the road as to purposely obstruct the passage of another traveler, as by constantly interposing one's wagon as an obstacle, or to "tail" his team, as it is called, keeping just in front of him no matter which way he turns, is a nuisance and an indictable offense. (14 Gray, 69; 1 Watts, 360.)

Things may amount to an obstruction of the highway, and hence be nuisances, though they are not in the road at all, but only near it. Thus an establishment for the manufacture of gun powder or nitro-glycerine, or a magazine for storing such compounds, if near enough to a highway to endanger the lives of people there, is a nuisance. (56 Barb., 72.) So is a building which is in such a ruinous condition as to be liable to fall into the street. (6 Salk., 357.) Or the leaving of any object near the road calculated to frighten horses and thus endanger travelers. (107 Mass., 164.) In one case a party had a derrick on his premises the boom of which swung over the highway. It was an ugly looking object and it frightened Mr. Jones's horses so that they ran away and injured him. The court said that such a thing or anything else placed near the highway the natural tendency of which is to frighten passing horses, is a nuisance, and that the person placing it there must pay all the damages. (107 Mass., 261.) In Connecticut a water-wheel so near the highway as to frighten passing horses was held to be a nuisance. (30 Conn., 129; 27 Id., 631.) In Illinois the reckless blowing of a steam whistle near the road

was held to be a nuisance. (47 Ill., 298.) In Massachusetts the reckless discharge of a gun near a highway was held to be a nuisance. (11 Mass., 137.) Again in Connecticut an unsightly pile of stones was held to be a nuisance (42 Conn., 295); also a steam whistle on a mill near a highway (38 Conn., 438), and a steam roller left beside the road. (29 Conn., 435.) But in Michigan a steam engine on wheels passing along a highway was said not to be an unreasonable use of the street, and hence not a nuisance. (34 Mich., 212.)

A foul smelling hog-pen close by the way side is and of right ought to be a nuisance, (37 Me., 361), or an unclean cow-yard, or anything that emits an offensive smell to the discomfort and detriment of travelers. (59 Mo., 321.) Any noxious concern, like a slaughter house, bone boiling establishment, glue factory, tannery, or the like, if so near the highway as to deprive the traveling public of its right to reasonably pure air is a nuisance, and may be abated.

4. Dangerous Excavations, Etc. If a farmer or other landowner makes an excavation so near the highway that persons passing along may by slipping fall into it, he will be liable for the harm done them if without their fault they do fall in. (12 Ill., 20; 51 N. Y., 224.) And the same is true if the excavation is near the path leading to his house, or upon any other part of his premises where he has extended an invitation either directly or by implication for people to come. It is his duty in all such cases to provide proper safeguards against danger and accident, and a failure in this duty renders him liable for the consequences. Not only should he keep excavations adjoining a highway or near the pathway to his house surrounded with proper safeguards, but any other dangerous object or obstacle there should be properly and adequately guarded against. By providing an approach to one's house or place of business, he gives implied permission and invitation to all persons, having occasion to go over it, to do so, and he places himself under obligations to keep the pathway in a safe condition. And it is said that if a person is injured because of the unsafe condition of such a pathway the owner can not shield himself from liability on the ground that the injured person was a trespasser, or had no business there (11 Moore, 354), his liability being the same as that of a shop-keeper who invites the public at large to enter his shop and then leaves trap doors open or other places

insecure and unsafe. Wells by the roadside or near the approach, or cisterns near the door of one's house should therefore be kept properly curbed or otherwise guarded.

But while the farmer must thus use care to keep his premises in a safe condition for the visits of persons who are expressly or impliedly invited upon them (68 N. Y., 283), including also his servants and employes (56 N. Y., 124), it must not be understood that he is under any such obligation to person who comes without any invitation, or to trespassers, or wrongdoers. (30 Md., 179; 20 Pa. St., 387.) If one goes without permission upon another's premises he cannot recover damages if he there falls into an unguarded pit, or runs, without carelessness on his part, into any other kind of danger. It is only when he goes by invitation, express or implied, that he is entitled to care and watchfulness from the owner. And he can not be regarded as invited simply because his entrance is not opposed. Thus if a farmer leaves his field uninclosed and people cross it without objection he is not liable to one who falls into an unguarded cistern there. (25 Mich., 1.) And what is true in this respect regarding persons is true also of their beasts. Thus if one's cattle trespass upon another's land and there fall into a pit or a well and are injured, there can be no recovery of damages. Or is one's breechy cow breaks into another's sugar bush and there drinks so much maple syrup that she dies, he can not recover damages because the syrup was negligently left there. (1 Cow., 78.)

5. Old and Unsafe Structures. A rickety old building, or an unsafe structure of any kind may be, and often is, a legal nuisance. If it is near a public highway and liable to fall and injure travelers, it is a public nuisance and may be abated by public authority. If it stands near the premises of an adjoining neighbor and is blown down by a high wind, and injury is done to the neighbor, like crushing his farm implements or killing his stock, the owner is clearly liable. One can not erect or maintain so weak and unsafe a structure that it will fall in ordinary times from its mere insufficiency of strength, and so injure the property of his neighbor, without being liable for the injury so done. And if his neighbor claims damages he can not excuse himself by saying that the neighbor had no business to leave his property where the building could fall on it. (28 How. Pr., 511.) Of course a man is not required to keep his structures so strong that they will with-

stand any and every gale. He must use a high degree of care to make them reasonably safe, and if they are then blown down, or a chimney is blown off, by any extraordinary force, like the force of a whirlwind or a tornado, and harm is done, he will not be liable. The liability in all these cases depends on some negligence or want of proper care to make and keep the structures safe. If in spite of such care they fall, and harm is done, no one is liable. And it is said that the owner is not responsible if he has employed competent contractors or mechanics to build or examine his structures, and is guilty of no fault on his own part. (3 H. & C., 511; 46 Cal., 409.)

6. Overhanging Trees. If the farmer has fruit trees or other trees, the branches of which extend over his line and into his neighbor's premises, such branches so far as they extend beyond the line are nuisances. They may be treated as such by the neighbor, who may sue for damages, or he may abate the nuisance himself by cutting the overhanging branches off. He cannot destroy the tree, though it derives sustenance from his soil, for that belongs wholly to him on whose land it grows, nor can he cut the branches back further than to the line. He can dig down and cut off the roots which extend into his soil and the owner of the tree would probably have no claim upon him if the tree died in consequence; but if he deliberately killed or poisoned the tree he would probably be guilty of a criminal offense. The fruit borne by overhanging branches belongs to the owner of the tree, and not to the owner of the soil over which it hangs (11 Conn., 177; 25 N. Y., 126), and the owner of the tree has the right to reach over and pick it, or if it falls upon the ground he has an implied license to enter and get it, doing no unavoidable harm. (113 Mass., 376; 46 Barb., 337; 48 N. Y., 201.)

If a tree stands directly on the line between two farms it is then not a nuisance. It belongs equally to each owner. Both own it and its fruit in common, and neither can destroy it, or injure it, without being responsible to the other. (34 Barb., 547; 25 N. Y., 123.) This is the general rule, but there are some conflicting cases. Bay windows and other projections extending over a neighbor's land are nuisances and may be abated. (51 Cal., 142.)

7. Cesspools, Privy Vaults, and Filthy Sewers. If the farmer has cesspools, privy vaults, sewers, or other places where filth is collected upon his premises, it is his duty to keep such filth

from becoming a nuisance to his neighbors. (44 Ga., 324.) If it escapes from such places and percolates through the soil and so reaches his neighbor's well or cellar, it is a nuisance. (1 Salk., 360; 99 Mass., 582; 36 Wis., 50.) And it is held that in this class of cases the law requires such precaution as will be certain of excluding the filth from the neighbor's land. The farmer can not deposit his filth and then claim immunity because the forces of nature, and not he, carried it to the neighbor's well. Only unavoidable accident will excuse in such a case. (99 Mass., 582.)

8. Discharge of Water. In the chapter on drainage rights it was stated that while it is not unlawful for the owner of one tract of land to allow the surface waters which collect upon it, the rain, melted snow, etc., to flow by percolation and other natural causes upon the land of a lower proprietor, still if he collects such waters in drains and discharges them at one place upon another's lands, it is a nuisance, and an actionable wrong, (22 Ohio St., 247.) He may divert all the surface waters and prevent their reaching another's land, and for this he will not be liable though serious damage is done, for the surface waters are his (47 N. Y., 73); but if he turns them upon his neighbor in any other way than that in which they naturally go, he commits a nuisance, and is liable for the damage done.

If the waters from the roof of one's house are discharged in such a manner that they fall upon another's land, or so near the boundary line that they must escape upon adjacent premises, it is a nuisance. (33 Mich., 232.) Or if waters are gathered into cisterns or reservoirs which leak, and they so escape upon other people's premises, it is a nuisance and the owner is responsible for the harm that may ensue. (108 Mass., 261.) When we reflect that water stealthily finding a hidden way upon a tract of lower land may render such land cold and unproductive, or the buildings that may be there damp and unhealthful, we see that these damages may be far from insignificant, and that it behooves the farmer to take care that he does not become responsible for them.

9. Ponds, Sloughs, Swamps, Etc. Swamps and marshes existing by nature can not be regarded as nuisances for which the owner of the land in which they exist is in any way responsible. Unhealthful and damaging as their exhalations may be there still seems to be no power or authority to compel their owners to drain them or otherwise remove their baneful influences. They are a

part of nature for which man is not accountable. (Cooléy on Taxation, 510.) Public authorities can assume the duty of removing them, and this is done under the operation of the various county, township, and local drain laws, by making special levies for the purpose. (8 Ohio, N. S., 333.) But as soon as man does anything to swamps, bogs, etc., which increases their bad effects, or changes their deleterious influences in any manner so as to make them offensive in a new or different way from what they were by nature, then he commits a nuisance and it is his duty to abate it, and if he does not he will be liable for all the consequences that can be traced to his acts. (43 Verm., 525; 47 Pa. St., 155.) Thus if a man has a low, boggy place upon his premises which he thinks by dyking up and draining into he can change into a fine artificial lake, and the result of his operations is only to create a much worse frog pond than the original, the increased miasms of which set the surrounding community into fits of fever and ague, it is a nuisance, and the owner will be liable if he continues it. Likewise if a man makes a pond anywhere and for any purpose upon his premises, or a brick-maker by removing clay leaves an excavation which collects water, and such places become foul and spread a poisonous effluvia over the neighborhood, then they are nuisances and must be removed or remedied, or their owner will become liable. In all these cases if the evil results from some lawful act, but is due to the negligent and slovenly manner in which the act is done, then the party is liable for all the injury directly traceable to his negligence. If the act is lawful and is carefully performed, but the evil is not apprehended or discovered until afterward, then the party is not liable for what he has done, but only for continuing it after he found or was notified that it was a nuisance and was injuring others. But if the act was unlawful, like the damming of a stream and setting the waters back on to the lands of the owner above, then he is liable for all consequences, whether the act was negligently done or not. (See Cooley on Torts.)

10. Diseased Cattle, Etc. The keeping of domestic animals which are affected with any contagious or infectious disease in such a way as to expose other animals to the contagion is a nuisance. It is not necessarily a nuisance to keep such animals upon one's premises or in one's stables. The keeping of them is not of itself unlawful (2 Barb., 104), in fact one might turn his

stables into a hospital for sick horses if he saw fit. But the nuisance and the wrong consists in negligently keeping diseased animals there, and in not exercising such care over them as will prevent injury to other persons. For instance, if one should allow such animals, knowing them to be diseased, to have the freedom of his premises and to go at large in the public highway, or should water them at a public trough used for watering the sound animals of other persons, he would be clearly liable for the consequences. (2 Rob., 326.) The farmer who knows that his cattle, or sheep, or horses, have an infectious and contagious disease must exercise all the care over them to prevent the disease from being communicated to the animals of other persons, that a prudent man would exercise under the circumstances, or that a rightful regard for the interest of others would require. He must keep them securely by themselves, and so far away from the partition between his land and that of his neighbor that the latter's stock can not become infected. If he fails of this he will be guilty of maintaining a nuisance, and he will be liable. So likewise if the farmer sells diseased animals without informing the purchaser of their condition, he will be responsible not only for the damage caused by the disease to the animals sold, but for the damage caused to such other animals as the disease may be by them communicated to. (13 Wend., 518.) And when animals which are infected are allowed to trespass upon other person's land and they there communicate the disease to the animals belonging to the owner of such land, it is held that the owner of such animals is liable for the trespass and for the damage caused by the infection, and that it is not necessary to prove that the owner knew his animals were diseased. (16 Conn., 207.)

There are statutes in many of the States making it a misdemeanor to drive diseased animals, particularly glandered horses and sheep having the foot-rot, along the public highways, and also preventing railroad companies from transporting them in their cars.

11. Careless Setting of Fires. Fire is such a dangerous element, and its consequences when beyond control are often so disastrous, that common prudence dictates the use of great care in the use of it. To make proper use of it is lawful; but to use it without observing the degree of care corresponding to its danger is an actionable wrong. (16 Me., 326.) The act of setting a fire

under proper circumstances not being in itself unlawful, the liability for injury depends upon some negligence or want of proper care. The care required, it is said, is "that degree of carefulness which a discreet, prudent, and careful man would exercise in the possession of his own premises." (8 Wis., 255.) If therefore the farmer, on a calm day, sets fire to his log heaps or brush piles and while carefully tending them a sudden rise in the wind or an unforeseen blast takes the sparks into his neighbor's stubble and injury results he will not be liable. But he must not suppose that having used proper care in starting his fires, in selecting a suitable time, place, and method, that his responsibility then ceases. He must watch them until they are out, and must use proper precautions to prevent their getting beyond his control and spreading to adjacent land. If, because of any negligence on his part, they do spread, it will make no difference whether they spread by running along the ground or by sparks being carried through the air by the wind, he will be liable for the damage done in either case. (107 Mass., 494.) The liability for injury depending upon negligence on the part of the person setting the fire, it is for the person injured to prove such negligence; he must make it clear that the other was to blame. (44 Barb., 424.)

Not only will the farmer be responsible for the results of his own negligence in this matter of fires, but also for the negligence of his servants or hired men in the ordinary scope of their employment. It is not necessary to the master's liability that he should direct his men to set the fires, though of course if he does so, and they do it carelessly and injury results, he will be liable. But if the men set the fire without the employer's direction or permission—but still do it within the scope of the master's business—because they think it the proper thing to do, then the master will be liable. When, however, the men embark on an enterprise of their own and carelessly start a fire, or if they set the fire out of sheer malice or wantonness, then the owner will not be liable; nor will he be liable if they deliberately disobey him. (10 Ill., 425; 509.)

There may sometimes be cases in which a man will not be liable for fires which result from his own or his servants' carelessness; as for instance, where he carelessly but unintentionally sets fire to his own buildings and the fire spreads from them to his neighbor's premises and does damage. The New York courts hold that in

such cases the damage done to the neighbor will be too remote to be charged to the first man's careless act. (37 Barb., 15; 35 N. Y., 210.) But the courts of other States and the Supreme Court of the United States have asserted another and probably better doctrine, namely, that all the damage directly traceable to the carelessness of the man setting the fire is chargeable to him, no matter whether he intentionally set the fire or not. (93 U. S.)

If fire is set by a trespasser, no matter whether he does it carefully or not, he is liable for all the damage it does. He had no business to set the fire at all and no degree of care on his part will excuse him. (21 Pick., 378; 43 Cal., 437.) Therefore if a careless hunter fires the farmer's woods he will probably be liable for all the damage done, though he does his best to extinguish the flames.

In some of the States the setting of fires under certain circumstances is prohibited by statute. Those States which contain large tracts of prairie land, where fires in dry times often result most disastrously, have generally prohibited entirely the setting of fires in such places. Where such statutes exist one who unlawfully sets a fire so prohibited must take all the consequences. (3 Ill., 431; 12 Mo., 120.)

12. Legal Remedies for Nuisances. There are three ways in which a man whose property is being injured, or rights jeopardized, or whose life is made miserable by the existence of some nuisance, may proceed to get satisfaction. He may abate the nuisance himself; that is he may go personally and with strong hand remove the nuisance, or prevent its doing further harm. He may apply to a court of equity for an injunction to prevent the use or continuance of the nuisance. And he may bring an action at law for the recovery of damages resulting from the nuisance.

13. Abatement of Nuisances. It is only rarely that a man is permitted to take the law into his own hands and to himself right the wrongs that are done him. But when a nuisance is erected or maintained which does him special injury, he is allowed to go and peaceably remove it. When the nuisance is a public one, doing injury to the public at large, then the proper public authorities have this right; though if a public nuisance specially injures an individual it becomes as to him a private nuisance and he may abate it. For example, if an obstruction is placed across a private way, it is a private nuisance, and the owner of the way may remove it

at once, whether he wishes to use the way or not. If an obstruction is placed across a public way or street, it is a public nuisance, and it is for the public authorities to remove it. But if an individual wishing to use the public way is thereby specially incommoded, then he may remove it. (56 Me., 197.) Unless, however, he has occasion to make use of the highway, he has no right to touch it; he must leave it to the public authorities. (12 Gray, 98.)

There are several restrictions placed upon this right to abate a nuisance. In the first place one must not commit a breach of the peace in order to accomplish it. If the abatement is resisted the proper method is to go to the courts for a remedy. (82 Ill., 162.) In the next place before one proceeds to such an extreme measure as the abatement of a nuisance, he should give notice to the party responsible for it, and request him to remove it, and should then give him a reasonable time in which to do so. (15 Wend., 397.) This notice and request, however, is not always essential to justify one in abating a nuisance. If the nuisance is of serious character and is the intentional and willful act or design of the party, or if the safety of life and property requires an immediate remedy, then no notice and request is required. (34 Conn., 529.) One who abates a nuisance must do it with as little injury to property as possible. If he causes any unnecessary loss he will be liable for it. (27 Ind., 394.) Lastly one who thus takes the law into his own hands and abates a nuisance of his own motion, must see to it that he keeps strictly within legal bounds. It is for him to show that the thing abated is a nuisance, and if he can not do this he will be liable as a trespasser from the beginning. (13 Vt., 394; 12 Mass., 311; 25 Mo., 209.)

From what has been said it will be seen that this remedy by private abatement is a dangerous one. The man who makes use of it is handling sharp edged tools, which may get him into trouble. Unless he is sure that the thing complained of is a nuisance, and unless the case is one which can not admit of delay, he better not attempt to remove it himself, but proceed by the slower and safer methods provided by law. In one case a man had some horses sick with a contagious disease which he kept on his own land. His neighbors, claiming that the horses were a nuisance in the community, spreading a bad disorder among other stock, entered without notice and abated the nuisance by killing the horses. The

court held that the act was not justifiable and that the owner of the horses might recover their value. (45 Mo., 121.)

14. Injunctions. Where a legal right is violated by an act that amounts to a nuisance which is of a continuous or permanent nature, an injunction can generally be had by applying to a court of equity. This is a writ or mandate from the court prohibiting the defendant from doing some act which is deemed unjust to the complainant. A preliminary injunction is usually first granted restraining the defendant from continuing the act complained of until the proceeding for determining the rights of the parties in the premises is terminated. The final or perpetual injunction is then granted if it appears to the court proper that it should be. Injunctions are used for preventing or restraining many things besides the continuance of nuisances. Common among these are the following: To stay proceedings at law; to prevent the transfer of stocks, notes, etc., and of personal and real property; to restrain the infringement of a patent, or a copyright, or the pirating of a trademark; to prevent the removal of property out of the jurisdiction of the court; to restrain the committing of waste, etc., etc.

Injunctions will only be granted in cases where there is no adequate and complete remedy at law; nor will they be granted while the rights between the parties are undetermined, unless it appears that serious and irreparable injury will be otherwise done.

The injunction is only to prevent or to stop the nuisance or other wrong. It never gives damages for the injury done.

15. Action for Damages. Where money damages are sought by way of compensation for the injury caused by a nuisance, an action on the case, as it is called, may be brought in the name of the person or persons injuriously affected, against the party erecting or maintaining the nuisance. If the nuisance is one which prevents or injures the comfortable enjoyment of property, the suit must generally be brought by the owner of the property, though if the property is rented, and the nuisance is an injury merely to the present enjoyment of property, like that caused by smoke, vapors, smells, noises, etc., the suit may be brought by the tenant of the property without proving any title in himself save that of mere present possession. (1 East., 244.) The rule seems to be that unless the injury is a permanent one the suit should be brought by

the tenant. (4 Met., 477.) But we cannot go into technicalities here. In bringing this action facts should be set forth sufficient to show that the act or thing complained of is in fact and in law a nuisance. The manner in which the nuisance was created need not be set forth, but the nuisance as it exists, and the injury produced thereby, and the liability of the defendant should be specifically set up, otherwise the declaration will be insufficient. (23 Barb., 444.) In all actions for nuisances which consist of the *negligent* doing of some lawful act, or the *negligent* use of some thing which is not of itself a nuisance, the negligence which is really the gist of the action must be alleged; and where the nuisance consists of the keeping of a dangerous domestic animal, it is usually necessary to set forth in the declaration and prove at the trial that the owner knew of the animal's propensities. (42 Vt., 343.)

The amount of money awarded in an action for a nuisance must be limited by the *actual* damages sustained. (10 Ohio, 161.) In some instances these will be easy to admeasure, as for instance, if the injury complained of is the loss of a tenant the damages will be the rental value of the premises during the time they have been unoccupied because of the nuisance. (53 N. Y., 152.) But in the great majority of cases the damages will be difficult to compute. Nuisances so generally affect the senses merely, and are so intangible and uncertain, that it is hard to put a money value on the injury they occasion. For instance, what money shall be paid to a man for having a disagreeable smell pervading his premises, or a continual racket kept up just over his garden fence, or in fact anything done which interferes with the pleasant enjoyment of his property? No precise rule can be laid down for computing such damages. They may be so great as to entirely destroy the property or they may be only so fanciful and frivolous as not to be worth considering. All that can be done in these cases is to leave the matter to the sound discretion of a jury. It is for them to say in view of all the facts of the case what in their best judgment the plaintiff ought to receive for the annoyance and discomfort he has been put to, and what the defendant ought to pay for the injury he has caused.

It is to be observed that the action for damages does not prevent the nuisance from being continued. That is done by an injunction. A proceeding for an injunction and an action for damages

may both be maintained against the same party on account of the same nuisance, But after one suit has been finished and damages have been awarded, if the nuisance is not abated another may be commenced. In fact a nuisance continued is a fresh nuisance every day that it is allowed to remain unabated, and new suits for the damage caused by its continuance may be commenced from day to day. (29 Barb., 291.)

CHAPTER XXI.

OF HIRING HELP. RIGHTS AND DUTIES OF THE EMPLOYER AND THE EMPLOYEE.

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| 1. Importance of the Subject. | 5. Articles of Apprenticeship. |
| 2. Relation of Master and Servant. | 6. Contract of Hiring. |
| 3. Hiring Infants. | 7. Implied contracts. |
| 4. Apprentices. | |

1. Importance of the Subject. One of the most important and oftentimes perplexing tasks of the farmer is the procuring and employment of necessary farm help. Misunderstandings arise, and much litigation has ensued because of imperfect knowledge as to the law governing the subject,—the relation of master and servant as it is called. In the present chapter, therefore, we shall endeavor to set forth, as clearly as possible, the legal rights both of the laborer and hirer, as well as the duties and liabilities of each, though the subject being so comprehensive cannot, of course, be exhaustively treated here.

2. Relation of Master and Servant. This relation or the relation existing between the one who employs and the one who is employed arises now only by contract of the parties. Indeed the modern legal definition of an employe or servant is one who, by reason of some contract, express or implied, becomes subject to the authority and control of another in some trade or occupation. In other times and other countries there were and are other methods by which one person can become entitled to the services of another; but in this country there is now no way in which one party can make another work for him except by the free will and consent of the person doing the work. As the relation rests upon contract it follows that the capacity of parties to make contracts is an important consideration in this matter.

3. Hiring Infants. A great many farm hands are persons under the age of twenty-one years. Such persons are, in law, infants or minors, and they cannot, except for necessities, make a contract which can be enforced against them. Upon grounds of public policy persons of immature age, lacking often that experience in the sharp conflicts of business necessary to prevent their being imposed upon, are protected from the harm that might come to them were they required to perform all the contracts that they may be induced to make. Consequently all contracts made by infants or minors, especially if not beneficial to them, are either void as to them or may be rescinded or avoided by them any time before or within a reasonable time after they become of age (13 Mass., 237.) Therefore if a minor hires out to work for a definite period of time, as one year, and for a definite rate of wages, as \$15 per month, he is not obliged to carry out his agreement if he does not want to. If he does do it his employer is bound by the contract and will have to pay him accordingly. Or if he works three months or six months and then leaves without just cause, he will be entitled to his wages for the time he has worked, notwithstanding he has broken his contract. And he can recover either the amount of his wages at the rate he hired, or he can renounce the contract and recover the actual value of the services that he has rendered (2 Pick., 332); and his employer cannot deduct from such amount any damages that he may have suffered by reason of the breach of contract. (11 Vt., 273.) This is contrary to the rule where the employe is of age, for in such case if he leaves without cause before his time is up he cannot recover anything for the services rendered, or at most can only recover the actual value of his services over and above the damage caused to his employer by his breach of contract, as we shall see more fully further on.

There is another consideration, more important than the foregoing, to be borne in mind with respect to hiring minors. The father being charged with the duty of supporting and educating his children is entitled to their services during the period of their minority. (23 Me., 569.) He is entitled to such reasonable and proper labor as they can perform at home or elsewhere, and if they are hired out to other persons he is entitled to either their wages or the actual value of the services rendered. When, therefore, a person under the age of twenty-one is engaged to work upon the farm, the farmer should not only remember that such

person is not bound, except in honor, to fulfill his engagement, but that the wages he earns belong to his father, and that payment to him may not cut off the father's right to recover payment also. Too great dependence should not be placed upon the minor's promise, for if after agreeing to work during the season he leaves just at harvest time the farmer cannot keep back any of his wages; and inquiry should always be made as to whom the wages are to be paid. If the father claims the wages, they should be paid directly to him or to the son only upon direction to that effect by the father.

It is to be observed, however, that where the father seeks to recover for the services of his son rendered under a contract which the son has made, he is so far bound by the son's contract that he cannot recover under it unless he shows a performance of it by the son or a legal excuse for non-performance (24 Vt., 513.) Nor can the son recover under such a contract, if he had no right to make it, but the father on discovering the fact may put an end to the contract and recover the actual value of the child's services, or he may ratify it, in which case he must see to it that the contract is performed or no recovery can be had.

If the minor has been emancipated, or as we commonly say, if he has "had his time given him," then his father loses the right to the son's wages, the son becomes entitled to his earnings, can sue for them if necessary, and payment to the son entirely discharges the debt. (6 Cushing, 458.) This emancipation may be brought about by a written instrument, or by a verbal agreement, or by the conduct of the parties. If the father simply says to the child "you may go and hire out and have the wages you earn," that is sufficient authority to enable the child to make a contract and receive his pay therefor (39 Conn., 270); and such authority once given cannot be withdrawn so as to injure the person who has hired the child. (74 Pa. St., 470.) But if the child falsely represents himself to be emancipated, as where he tells his employer that his father has given him the right to his wages, that will not affect the father's rights. The fraud of the son does not estop the father from collecting the son's earnings. (32 Vt., 780.)

If the father casts the child off and leaves him to shift for himself, that works his emancipation and gives him the right to his earnings. The father, by neglecting to discharge the natural duties of a parent, loses the right to his child's earnings, and the

courts are liberal in such cases in granting to such children the right to their own earnings, thus encouraging them to earn an honest living for themselves. (Schouler on Domestic Relations, p. 370.) Or if the parent becomes unable, by reason of poverty, to provide for the child, he then loses the right to the child's earnings (15 N. H., 490); also if the parent absconds to parts unknown it has the same effect. (2 Met., 92.) As has been stated, if the parent authorizes the child to receive his wages, payment to the child is then legal, and such authority may be implied from circumstances. (10 Barb., 300.) American courts are inclined to favor such arrangements between father and son, as they accord with the spirit of our free institutions. A New York Court, following a Massachusetts decision, held that if a son goes out and contracts his services on his own account with his father's knowledge and without objection from him, a payment to the son cuts off the father's claim. (10 Barb., 300; 2 Pick., 202.)

There are statutes in some of the States providing that the wages may be paid to the minor unless the father, within a certain time after the hiring gives notice to the employer that he claims the son's wages. The N. Y. statute requires that such notice be given within thirty days,—otherwise the father loses his right. The reader can examine for himself the provisions of the statutes of his particular State on this point. If there is no statute then what is above laid down will hold true. In any event it will be safest for all parents to give prompt notice to employers of claims they may have to their minor children's wages, and it will be safest for all employers to ascertain from the parents of such minors as they employ how and to whom the wages are to be paid. That will avoid all difficulty.

The marriage of a minor with the consent of the parent works his emancipation, and entitles him to his wages, because, as it is said, he needs his earnings to support his family. But if he marries without the parental consent no such legal result follows, though it would seem that the alleged reason is equally applicable, for his family is equally in need of support. A court in Maine, however, reasoned otherwise and gave the erring young Benedict's wages to his father, leaving the poor wife without a penny. (24 Me., 531.)

If a minor's father is dead the mother is entitled to his services or wages during the time that she supports him. It is not neces-

sary that she should afford him his entire support. If she afford him a home to which he may go when he pleases and discharges her natural parental duties toward him to the best of her ability, that will entitle her to his earnings. (37 Conn., 435.)

A step-father, not being bound to support his wife's children by a former husband, is not entitled to their custody, nor to their services, nor wages. (14 Pick., 510.)

The rules above laid down apply to adopted children the same as to natural children, provided that they have been adopted in conformity to the provisions of the law. (25 Ga., 612.)

The mother of an illegitimate child is entitled to its earnings if she supports it, but the putative father is not. (15 Barb., 247.)

It should be remarked before leaving this subject that if a child runs away from his parents and is taken into service the father can not afterwards recover of the employer for such service without allowing a reasonable and proper deduction for the support of the child during the time he was so employed. (20 N. H., 388.)

4. Apprentices. An apprentice is a person bound to another for a certain time to learn a certain trade or business. The relation is not as common upon farms and in agricultural communities as in the mechanical trades, but it is equally applicable to any legitimate employment, and is a matter of considerable importance. In England, after the time of Queen Elizabeth, it was necessary for every artisan to have served an apprenticeship of seven years, otherwise he was not allowed to follow his trade. The law there requiring this, though for the professed purpose of preventing injury to the public from the employment of quacks and unskilled artisans, was really enacted in the interests of certain guilds and trades unions which had existed there for centuries. In America there has never been any restriction of this sort placed on labor, everybody being left free to follow any trade or occupation he pleases, whether he has served an apprenticeship in it or not. Experience has shown that it is best to open wide the door for the free exercise of inventive genius, to allow every one to do as best he can, leaving it for the public to decide by its bestowal of patronage whether or not the individual is worthy. The system of apprenticeship is therefore much less employed here than it formerly was in England. But the right of parents and guardians to "bind out" their minor children is fully recognized here, and in most, if not all the States, there are statutes regulating the matter.

In determining any question relating to this matter, reference should always be had to the statutes of the State in which the question arises, and the provisions of such statutes should be strictly followed, especially in drawing the articles of apprenticeship, otherwise the contract may be void or voidable by the apprentice at any time. The minor or person being apprenticed must consent to the arrangement, and the consent must appear in the articles of apprenticeship; though under the statutes of many States minors who are paupers may be apprenticed without their assent by the proper authorities. (32 Me., 299.)

Any person, who is capable of making a binding contract and of carrying on a trade or business, can take an apprentice; and any person who if a minor is willing to unite with his parent or guardian in entering into articles of apprenticeship, or if of age and otherwise competent is willing to enter into such articles on his own account, can become an apprentice. At common law an infant can bind himself as an apprentice, it being regarded as for his benefit, but this cannot now be done because of the liability of the abuse of such power if it were granted. (8 Johns, 328.)

When a father or guardian binds out a minor, such father or guardian becomes responsible for the performance of the contract by such minor; but he will be relieved if the master is cruel and drives the apprentice away, or if he changes the trade which the minor was apprenticed to learn. (4 Mass., 480.)

The contract of apprenticeship must be in writing, and it continues usually until the apprentice, if a boy, becomes of age, or if a girl, until she is eighteen.

It is the duty of the master to instruct the apprentice in all the knowledge of the art, craft, or business which he has undertaken to teach him; to watch over the conduct and morals of the apprentice, giving him good advice and setting him good example, to treat the apprentice kindly and not put him to menial or other employments unconnected with the trade he is to learn. It is said he can moderately correct the apprentice for negligence or misbehavior (1 Ashm, Pa., 267), but here he had better let his moderation be known to all men, and especially to the apprentice. He must perform all the covenants entered into by him in the articles of apprenticeship, and he can not dismiss the apprentice except by consent of all parties interested (12 Pick., 110), or else by the sanction of a proper court. (8 Conn., 14.) Nor can he remove

the apprentice out of the State in which he was apprenticed unless the removal was provided for in the articles, or can be implied from the nature of the employment. (13 Met., 80.)

It is the duty of the apprentice to serve the master and obey all his lawful and proper commands, to protect and promote the master's interests, to endeavor to well learn his trade or business, to keep all the covenants entered into by him in the articles of apprenticeship, and not to leave the master's service during the term of the apprenticeship.

The master is entitled to all the earnings of the apprentice, and to recover the same from others for whom the apprentice works during the term, just as a father can recover for his son's services, and payment to the apprentice will not bar the master's right of action, unless it can be shown that the master has abandoned his rights. (107 Mass., 419.) Of course if the master consents to the apprentice's working for others and receiving his pay, that alters this rule. Where the master consented that the apprentice should enlist, such consent entitled the apprentice to his bounty and wages (39 Vt., 382), and a similar ruling was made where the master consented to the apprentice's going on a sea voyage. (12 Pick., 115.) The apprentice is also entitled to pay for extraordinary services, when promised by the master, or even without such promise under certain circumstances. (1 Whart. Pa., 113.)

Upon the death of the master, the apprenticeship, being a personal trust, is dissolved, and the master's estate is liable for a return of a proportionate amount of the money paid for the apprentice's instruction, if the fee covered the whole term. And the same is true where the apprenticeship is terminated for any cause for which the master is at fault. (18 M. R., 759.) But now-a-days it is not common for the master to receive a fee for the apprentice's instruction, the services of the apprentice being usually deemed sufficient.

The following is a common form of articles of apprenticeship, but, as has been observed, before making use of this or any form the Statutes of the State where it is to be used should be examined to see that it conforms to them.

5. Articles of Apprenticeship:—

THIS AGREEMENT WITNESSETH: That A. B. of _____, _____, does by these presents bind out his (or, if the father is not living, her) son C. B., and that the said C. B. does hereby bind himself out as an apprentice to E. F. of _____, _____, to learn the art (business, or trade) of (state what.)

That the said C. B. is at the date hereof aged _____ years.

That said C. B. shall dwell with and serve said E. F. as such apprentice from the date hereof till _____ day of _____.

That during said term said apprentice shall faithfully serve his said master, keep his secrets, and at all times readily obey his lawful commands. He shall do no damage to his master, nor wilfully suffer any to be done by others. He shall at all times diligently promote his master's interests, shall not absent himself from the service of his master, but in all things shall demean and conduct himself as a good and faithful apprentice ought.

That the said E. F., in consideration thereof, does hereby covenant, promise, and agree to instruct and teach said apprentice, or cause him to be instructed and taught in all the ways of the art (business, or trade, etc.,) aforesaid to the best of his ability and means; to instruct and teach said apprentice, or cause him to be instructed and taught to read, write, and cipher, to find and provide said apprentice good and sufficient food, clothing, and lodging, and other necessities during said term, and at the expiration thereof to give him _____ dollars (clothes, etc., as the parties may agree).

In witness whereof the parties hereto have here set their hands and seals this _____ day of _____, A. D. _____.

_____ { L. S. }

_____ { L. S. }

_____ { L. S. }

6. Contracts of Hiring. The relation of master and servant always arises out of contract, but it is not always necessary that the contract be in express terms, nor is it necessary that it be in writing unless the hiring is for more than one year. We see therefore that contracts of hiring may be implied or they may be express, and we also see that some of them must be in writing.

7. Implied Contracts. Where services have been rendered by one party for another, and there has been no agreement as to the price to be paid for them, the law will imply a promise on the part of the employer to pay the current rate of wages for that class of service. If the services are of such a kind that no current rate of wages exists, then it will be implied that the contract was for the actual value of the services, and the party doing the work will be entitled to what it was reasonably worth in view of all the circumstances of the case. (Wright, Ohio, 242.)

Where a person is engaged to work, and no term of service is agreed upon, no time at which the service is to terminate is agreed

to, then either party is at liberty to put an end to the relation at any time, and the master will be bound to pay what the services amount to at the rate agreed upon, or if no rate was agreed upon he must pay what the services were reasonably worth during the time they were rendered, without reference to any damage he may have been put to by reason of the servants' leaving. (5 Bing., 37.)

Where services are rendered without there being any understanding at all concerning them, but under such circumstances as lead the laborer to expect pay for them, it is for a jury to say—in case of dispute—whether the person for whom the services were rendered expected, or *ought* to have expected to pay for them, and if so the laborer is entitled to the actual value of the services. (41 Mo., 441; 17 Wall., 123.) If a person for whom services are rendered has reason to believe that the person rendering the services expects pay therefor, and he allows him to continue laboring under that expectation, the law will imply a promise to pay what the services are reasonably worth. One can not get out of paying for such labor by saying that he never agreed to pay for it. He should have told the laborer that he did not expect or intend to pay.

But it must not be understood from this that a person can recover pay for services that he obtrudes upon another. There must be either a request for the services, or a promise to pay for them, or something from which the law will imply either a request or a promise. For example: If without being requested, I assist my neighbor in saving his goods from a fire, I cannot afterwards charge him for the service (20 Johns., 28); nor if I nail boards on his fence to prevent his cattle from escaping, or having the privilege of getting water from his well I put a new sweep and bucket in it, can I recover pay therefor, no matter how necessary the work. (12 Mass., 65.) Nor can I recover pay for work for which I had no intention of charging nor expectation of receiving pay for, not even though I hoped that the man for whom I labored would leave me something in his will, or give me some other benefit. Though if there was an agreement to leave me a legacy and that agreement was not fulfilled, the law will imply a promise to pay, and I can recover the actual value of my service out of the man's estate. (13 Johns., 379; 14 La., 581.)

There is one exception to the rule that no pay can be recovered for services that are not requested, and that is in the case of lost

goods. -The finder of lost property, who cares for and keeps the same until the owner reclaims it, is entitled to reasonable pay for the labor he has expended in so doing. (106 Mass., 286.) There are statutes upon this subject in most of the States.

If one *compels* another to work for him, or induces him to do so by fraud, he becomes liable to pay what the services are reasonably worth. (3 Yeates, 250.)

Where services are rendered for near relatives, as where one works for his father, or brother, or grandfather, the law will not *imply* a promise to pay for them; so that if there is no express promise or agreement, no recovery can be had therefor (44 N. H., 293); but the presumption that such services are gratuitous does not apply where the parties do not live together in the same family. (33 Ala., 501.) It may be remarked in passing that a similar rule applies where board is furnished to near relatives. Thus if a son boards with his father or father-in-law, or *vice versa*, in the absense of an express understanding or agreement that it is to be paid for, there is no liability.

CHAPTER XXII.

THE MASTER'S LIABILITY TO HIS SERVANTS

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|----------------------------------------|-----------------------------------------------|
| 1. The Employer's Duties. | 4. Injuries from Defective Buildings,
Etc. |
| 2. Injuries Caused by Fellow-servants. | |
| 3. Injuries by Defective Machinery. | 5. Risks not Incident to the Employ-
ment. |

Much litigation has taken place over this subject. Employes are constantly bringing suit against their employers for injuries received in the employment, and while many of the suits are ill-advised, and hence fruitless, there are many cases in which employers have been compelled to pay roundly for injuries resulting from their negligence and failure of duty toward those in their employ.

While the decisions of the courts are not harmonious upon this subject, the following may be laid down as a safe doctrine for the guidance of those interested:

1. The Employer's Duties. A person who hires others to work for him is under obligation to discharge faithfully the duties resting upon him as master. If he fails to perform these duties, or performs them negligently, and such failure or negligence causes injury to an employe, he is liable for the damage done. He is not liable for the injuries which one servant receives from another, as will be explained, but his duties as master he must personally perform or must be responsible for. If he delegates them to some one else, if he hires a man to perform them for him, he still remains responsible for their faithful performance. This distinction must be kept clearly in view. The master's obligations are:

1. To exercise proper care in the employment and retention of servants.

2. To exercise proper care in purchasing and retaining implements and machinery.

3. To exercise proper care in putting and keeping the premises in safe and proper condition.

4. To exercise proper care not to expose the servant to risks not incident to the employment for which he hired.

To illustrate the first of these general duties, suppose that a farmer employs a young boy, unskilled in farm work and especially in the management of horses, and sets him to work with a spirited team. Through the negligence or inability of the boy the team runs away and injures another employe. The farmer will be liable for the injury, for although the boy was negligent, it is still the farmer's failure to exercise care in hiring the boy for the work that really caused the injury. Had such care been exercised and a competent man been hired to drive the team, the employer would not be liable, even though the same accident were to happen. Having exercised proper care in this direction the employer is relieved. If, notwithstanding such care, a man is hired who becomes negligent and careless, and injury results to another workman, there is no responsibility on the part of the employer, unless he failed to exercise care in retaining the man.

2. Injuries Caused by Fellow-servants. One of the risks which a man voluntarily assumes when he enters any employment is that due to the carelessness of his fellow-workmen. If he is injured because of any negligence on the part of a fellow-workman he has no claim therefor upon his employer unless the employer is guilty of negligence in hiring or keeping the negligent workman, or unless some one to whom the employer has delegated his duties is negligent in this regard. This may be illustrated by the case of a farmer who should hire two wood-choppers to chop in his woods. He exercises proper care to ascertain that they are both competent to do such work, and sets them to work. One of them negligently falls a tree upon the other and injures him, or negligently injures him in some other way. The farmer is not liable.

3. Injuries by Defective Machinery. The second obligation of the employer to his employes is that of exercising proper care in the purchase and retention of machinery to be used in his employment. If an employer purchases machinery which

he knows is defective, or if he keeps and continues to use machinery after it has become defective and is not reasonably fit for use, and an employe is thereby injured, the employer will be liable for the damage caused. To illustrate: Suppose a farmer has an old and rickety sawing machine which he uses winters to saw up his stove wood. He continues to use it after it has become unsafe and unfit for use. The saw, perchance, has become rusty and full of flaws, and, while in high motion, it flies to pieces and cuts off a workman's arm or leg. The farmer must pay for the damage done.

The master's duty to keep his machinery in proper condition does not require that he keep it in the best possible condition or that he purchase only the most approved or most expensive machinery. His duty is complied with if he procures such machinery and keeps it in such a condition as an ordinarily prudent and careful man would under the circumstances. He can use new or old machinery, latest improved or oldest fashioned, without being liable for injuries resulting therefrom to his servants, unless there are defects in them which are not apparent to his servants. If there are latent defects which he knows about or which proper care on his part would disclose he might be liable if he continued to use them, when if the defects were open and apparent he might not be liable. The servant is required to use due care to prevent injury to himself, for if he contributes toward the negligence which causes his injury he cannot recover, though the master may have been also negligent. If he is given a machine to work with that has a secret flaw in it, the very fact that the defect is latent and unknown to him may prevent his using that care necessary to avoid injury. In other words the servant must see defects which are open and notorious and avoid danger from them, the rule being that the employer is not liable to the servants for injuries from defects known to the servants, unless he has been notified of the defects and has failed to remedy them.

4. Injuries from Defective Buildings, Etc. The third obligation of the employer to his workmen is that of exercising proper care in securing and keeping in a safe condition the premises in which the employment is carried on. To illustrate this, suppose that a farmer allows the sills under his barn to get so weak and rotten that they break and the building falls and maims a workman, or suppose that a miller allows the beams and supports under his mill to become so defective as that the mill falls and

injures an operative, in each case the employer will be liable. (24 N. Y., 410.) But here again, as in the case of machinery, if the defect is one which is open and apparent to the workman, and the injury is one which the exercise of care on his part would prevent, there can be no recovery. In all of these cases the employer does not warrant that his machinery or premises shall be absolutely safe, nor does he insure the servant's safety. His duty is to use proper care to see that his premises and machinery are reasonably fit and safe. It is for the jury to determine whether he has used proper care. If he has and notwithstanding it an injury has occurred he is not liable. Nor is he liable if the injury might have been prevented by the exercise of care on the servant's part. The fact however that the premises are known by the servant to be defective, does not necessarily require him to leave the service. If the defects do not indicate immediate danger, and he calls the employer's attention to them, he may continue at work, and if the employer neglects to remedy the defects and an accident happens, he will be responsible for it. (106 Mass., 282.) But if the defects are glaring and indicate immediate danger, the workman should refuse to continue the work, and if he does continue under such circumstances he takes his chances on being hurt. (110 Mass., 240.)

5. Risks not Incident to the Employment. The fourth and last duty of the master to his men is that of shielding them from risks not incident to the employment for which they hired. When a man hires out in any particular business he voluntarily assumes the ordinary risks to which that business exposes him. A sailor takes the chances of wind and wave, a miner the risk of being choked by fire damp, a builder the risk of falling from the scaffold, and a painter the chances of getting the painter's colic. The contract of hiring is presumed to have been made with reference to the ordinary danger of the work to be done, and the compensation to have been arranged accordingly. If an injury resulting from one of these risks is sustained by the servant, it can only be regarded as an accident, a mere casualty, and the misfortune must rest on him. (28 Vt., 59.) But the employe does not undertake to run the risks incident to other employments than that for which he hired, and if he is put to other employment the master becomes responsible for the injuries he receives without fault on his part from the ordinary risks and dangers of that

employment. To illustrate: Suppose a farmer hires a man as an ordinary farm laborer. He is afterwards put to work in a saw mill which the farmer also runs, and is injured by one of the ordinary dangers incident to the latter employment. The farmer is liable for the damages caused by the injury. It is true the man could have refused to work in the mill, but his primary duty was obedience and he undertook no additional risks by obeying the master's orders.

CHAPTER XXIII.

THE EMPLOYER'S LIABILITY FOR THE ACTS OF HIS EMPLOYEES.

1. Statement of the Rule.

There is an old maxim of the law—*Qui facit per alium facit per se*,— or, “He who acts by another acts himself,” which is the key-note of the master’s liability for the acts of his employes. The acts of the servant, in the scope and line of his employment, are always regarded in law as the acts of the master himself, and it is for this reason that employers are so often called upon to respond in damages for injuries resulting from carelessness, negligence, or willfulness on the part of their employes.

1. **Statement of the Rule.** The employer is responsible not only for those acts which he actually directs his employes to perform, but for everything that they do in carrying on his business. It matters not whether the acts are performed intentionally or unintentionally on the part of the servant, if injury results from them to third persons who are themselves blameless, the master is responsible. But if the employe, while in the general employ of the master, steps aside and does any act outside of his employment, then of course the master is not liable. So far as that act is concerned he is not in his master’s employ. For example: Suppose the farmer sends his man with a team to mill and on the way the man carelessly runs over a little child, the master will be liable; but if while waiting for his grist the man takes one of the horses and runs a horse race with the miller’s son, the farmer will not be liable for any injury that may result therefrom. If on the way home, however, the man deviates from the regular way and takes

a somewhat circuitous route in order to call on his sweetheart and carelessly runs over a child, the master will be liable. He is still on the master's business sufficiently to render the master liable.

While it matters not to the master's liability whether the wrongful act of the servant be performed by him intentionally or unintentionally, yet the statement should be modified by the remark that character of the intent will frequently determine the question of liability. For instance: If the servant intends by the act to further some object of his own, as to gratify a personal spite, and does not intend to promote his master's interests, then the master is not liable. To illustrate: Suppose the man on the way to the mill viciously and intentionally runs into a cow straying in the road, to gratify a personal spite which he has against the owner of the cow, then in accordance with the above principle the master is not responsible. On the other hand if the willful act in the scope of the servant's employment is done with the intention on his part of furthering his master's business, then the master is liable. To illustrate: Suppose the man, as he approaches the mill, willfully runs into the wagon of another farmer for the purpose of getting ahead with his grist and so to promote his master's interests, then according to the above principle the master will be liable. (See Cooley on Torts, pp. 531-541.) It matters not whether the effect of the act is really to promote the master's interests or not, if the employe thinks it will and does it under that belief, then the master is responsible for it. But if the act is not within the scope of the servant's employment, then, as has been stated, it matters not what the intention or motive is, it is then not the master's act and he is not responsible for it. For example: If on the way home from the mill the man meets some boys whom he mistrusts have been foraging in his master's orchard, and thinking that it will promote his master's interests he gives one of them so sincere a flogging as to seriously injure him, the master can not be held responsible for that act, unless he directed it, for it was clearly outside of the servant's employment. Of course if the servant is given any discretionary powers, as indeed most farm hands are, and in the exercise of those powers injury is done to third persons, either intentionally or unintentionally, the master is liable. For instance, if the farmer goes away from home, leaving his farm in charge of his hired man, he will be responsible for everything the man does in the general conduct of the place during his

absence. The fact of his placing the man in such a position of trust justly renders him liable for the man's acts in carrying out the trust. Consequently if the man, through lack of judgment or ability, does an act which injures a third person the farmer will be liable. Nay, more, even if the man while under the influence of high temper or uncontrollable passion, steps beyond the line of his authority and inflicts an unjustifiable injury upon another, the farmer may be required to respond in damages. (69 N. Y., 129; 169.)

It is thus seen that the wrongful act may be in direct disobedience of the master's orders and still the master be held liable. If the act is within the scope of the employment, and is committed in the exercise of a discretion which has been given to the employe, that is sufficient to make the master responsible. In other words, the master must not only give proper directions, but he must see to it that they are carried out. (14 How., 468; 46 N. Y., 23.) The illustrations made use of in the case of negligent fires (page 177), aptly illustrate this principle. Another familiar illustration would be the case of a farmer who directs his employe to drive trespassing cattle out of his fields, but expressly forbids him from worrying or injuring them, and the employe, directly disobeying the master, goes after them with a savage dog, or chases them with sticks or stones, and makes them jump a deep ditch by which means one of them breaks its legs. It needs no ghost to tell us that the master would be responsible. (See 16 Ill., 313; 49 N. Y., 255; 28 Mich., 496; 106 Mass., 105; 50 Mo., 104, for cases in point.)

It should be remarked before leaving this subject that these rules of liability apply the same where the injurious act is committed by the master's son, if he works for his father, or by his wife if she has charge of the premises

CHAPTER XXIV.

TAXATION.

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| 1. Definition of Taxes. | 5. Tax Deeds. |
| 2. Power to Tax Limited. | 6. Tax Sales. |
| 3. Is the Tax Valid. | 7. Land Shakes and Tax Titles. |
| 4. If Paid Taxes Cannot be Recovered. | |

Every man who owns property has to perform the not over pleasant duty of paying taxes. Government is a necessity of civilization, and money is necessary to enable government to exist and perform its functions. The power of government therefore to tax the property or individuals within its jurisdiction is unquestioned, resting as it does upon the highest law, that of absolute necessity. In raising its revenues the government endeavors to secure justice and equality, and to place a burden upon the individual as near as may be in proportion to the benefit he receives. As a person owning much property receives more benefit from the government in the way of protection for his property than the person owning but little, it is right that he should pay more toward the support of government. For this reason taxes are usually assessed, not against the individuals, but against the property in a State. In spreading taxes upon property the design is to distribute them equally upon all property of whatever kind within the taxing district. Of course there are a few exemptions, including the property of religious and educational institutions and a few household chattels and goods covering the bare necessities of life. But aside from these limited exemptions the law provides for the equal assessment of all property, real and personal, lands, chattels, securities, and investments, to the end that every thing of value may contribute its proportionate share toward the burden of its

own protection. But much personal property—like stocks, bonds, notes, and other similar securities—is of such an intangible nature that in spite of the law it often escapes taxation. The searching eye of the most vigilant assessor fails often to discover its whereabouts, so that as a matter of fact in this country the principal part of the burden of supporting government falls upon the real estate, or upon the owners of the land. Land is tangible, immovable, and impossible of concealment, while much personal property can be easily hid away. Money, for instance, rarely gets assessed, and secured debts, like mortgages, generally escape. Indeed, except in the cities where the expense of local government is high, there is not much effort made to get them represented upon the assessment roll. And where effort is made to do so, where the records are examined for the purpose of finding who owns mortgages, it is not difficult to evade the assessor's eye. For instance a person taking a mortgage can have it made to some friend in whom he has confidence living in another State or country, who gives him an assignment of it. He puts the mortgage on record, but does not record the assignment. The record then shows only a mortgage made to a person in another State beyond the tax collector's reach. There are other devices for avoiding taxation which might be mentioned. All of them involve a certain degree of dishonesty, and a shirking of the plain duties of citizenship. In this country taxes are comparatively light, and they are generally levied with justice and equality. Patriotism requires their prompt and willing payment. When they become oppressive or unjust there is generally means of legally avoiding them as we shall see.

1. Definition of Taxes. Taxes are the enforced proportional contribution which the State requires of persons, or levies upon property for the support of the government and for the public needs. That government must have means to enable it to discharge its manifold functions is obvious; that the discharge of these manifold functions and duties is necessary to the protection and well-being of citizens is also obvious, hence as we have seen the power which is given to government to enforce payment of taxes is justified by the necessity which compels it.

2. Power to Tax Limited. While this power of government is great and imperative it is not arbitrary, but rests upon fixed principles of justice. These principles may be enumerated as follows:

1. The tax must be raised for a public purpose, and not for a private purpose. To illustrate: Suppose an industrious farmer meets with misfortune by having his house burn down, and the township with generous sympathy votes to repay him his loss. The amount is included in the tax to be raised that year and is spread upon the roll. The effect is to vitiate the entire tax for that year. It is a defect sufficient to warrant the restraining of the collection of the tax; or if the tax is not paid on any particular piece of land, and it is sold by the State, the tax deed will be void.

2. The tax must be levied upon a principle of equality and uniformity. There must be some systematic apportionment of the tax among those who receive the benefits to pay for which the tax is raised. To illustrate: A State tax must be apportioned to all the property and persons throughout the State, a county tax throughout the county, and a town tax throughout the town. To secure this uniformity two things are essential. 1. In each taxing district taxation must be confined to objects within its jurisdiction and limits. 2. There must be a uniformity in the manner of assessment.

The legislative power in each State, to secure uniformity and equality in taxation, has prescribed a way in which taxes shall be raised. To determine whether any particular tax is properly levied, so as to impose a legal obligation upon the tax payer to pay it, a comparison must be made between the method pursued in levying the tax and the method prescribed by law. If any requirement of the statute intended for the benefit of the tax payer has been omitted, the tax is void and its payment cannot be enforced.

3. Is the Tax Valid. To answer this we must not only know that the laws authorizing the tax are valid but that they have been faithfully carried out by the taxing officers. Tax laws must embody or be in accordance with the general principles above laid down, and they must conform to any other limitations that may be contained in the constitution of the particular State. If they do not they are not good laws, and a tax levied under them is not valid. But suppose that the tax laws are all right, it is then necessary to see that in the case of the particular tax in question they have been properly executed. If it is found that there has been any substantial variation from the method they lay down, and especially if any requirement obviously intended for the benefit of the tax payer has been omitted, the tax, as we have seen, is

void. For example: The tax laws generally require that the assessment rolls, as prepared by the supervisor or assessor, shall be placed open to the inspection of the tax payers, in order that an opportunity for complaining of grievances may be had before the assessment is finally fixed. This is a requirement obviously for the tax payer's benefit, and if it be omitted the tax will be void. Again the amount to be raised in any given taxing district for certain purposes, as bridges, roads, etc., is usually limited to a certain amount. If an amount in excess of the limitation is spread upon the rolls, the tax is void.

In general, it may be said, that if any portion of the amount claimed for taxes is illegal, whether by being for an unauthorized purpose or for an amount in excess of that allowed by law, the whole tax is thereby rendered void. To illustrate: The statutes of Michigan provide that the electors of a township may vote a tax not exceeding in any year one per cent of the assessed value of the taxable property in the town, for the purpose of building a town hall. Suppose they disregard this limitation and vote an amount, in excess of the one per cent, which is included in the general tax. The effect will be to invalidate the entire tax. (40 Mich., 627.)

4. If Paid, Taxes Cannot be Recovered. As a matter of fact, owing to the many statutory requirements to insure just taxation and to the inexperience and inaccuracy of taxing officers, a large proportion of the taxes levied in this country are invalid. But as the tax payer generally receives substantial benefits from them, or from most of them, it is the nearly universal custom to pay them without question or protest. Indeed the expense and trouble of discovering the defects and proving their existence is in general greater than any one individual's tax will warrant. Hence unless there is some serious injustice or hardship in the tax, or some other special reason for avoiding payment of it, it is usually and quite properly paid without complaint. When it is so paid it cannot generally be recovered back, unless paid under protest. If people illegally taxed acquiesce and pay their taxes they can not afterward be heard to complain, but if they refuse the courts have no power to compel them. (17 Mich., 218; 40 Id., 628.) This is the general rule. In some of the States there is provision made by statute for paying the tax under protest and then recovering back if it proves illegal, in an action against the township.

5. Tax Deeds. The power of taxation necessarily implies the power to collect the tax. If the one did not include the other the State would be left without certain means of getting its revenues. If the tax is not voluntarily paid, the law can and generally does authorize the subject on which the tax is levied to be sold for its payment. Thus land is sold for non-payment of taxes, and the conveyance by which it is sold is called a *tax deed*. This instrument, executed by the proper official in the name of the State, undertakes or purports to convey the title to the land described in it to the purchaser at a tax sale. But it is not a warranty deed; its recitals bind no one, and its validity depends upon the regularity of the proceedings prior to it. It does not even create a presumption that the facts upon which it is based are true, nor does it estop the former owner from setting up any defense he may have. The purchaser takes his chances of getting title, and upon him rests the burden of proof. When, however, it is shown that the public officials have properly performed every duty imposed upon them in the premises, and that every condition essential to its validity has been complied with, the tax deed becomes conclusive evidence of title in the grantee or purchaser, according to the extent and purport of the deed. (Blackwell on Tax Titles, 430.) We see from this that if the tax, for the non-payment of which the land is sold, is invalid for any of the reasons hereinbefore stated, the tax deed will be of no value.

6. Tax Sales. These are sales of lands for the non-payment of the taxes assessed upon them. The power to sell does not attach till every other means of collecting the tax is exhausted. All the proceedings prior to the sale—the assessment, levy, attempt of collection, and everything connected with them—must have been regular. The lands must have been duly entered upon the tax roll by plain and legal description; they must have been duly assessed according to law, and the custom of assessing them deliberately at one-half or one-third their cash value when the statutes require them to be assessed at their full cash value, is sufficient to cast grave doubts upon the validity of the sale. The assessment roll must have been placed in the hands of the proper officer with authority to collect the tax; the tax must have been demanded, all means for collecting it exhausted, the list of delinquent lands properly returned, a judgment rendered (when judicial proceedings are necessary), the necessary warrant or authority delivered to the

officers entrusted with the power of sale, and the sale advertised in due form of law. The sale must be at public auction, at the exact time and place fixed by law and mentioned in the notice, to the highest bidder (which in many of the States means the person who will pay the tax and expenses due on the tract offered for the least quantity of it), and the sale must be for cash. The statutes authorizing the sale must be closely followed. We, of course, cannot give even an outline of these statutes. Each reader must, as he has occasion, look up the statutes of his particular State himself.

7. Land Sharks and Tax Titles. In almost every community there may be found a few individuals belonging to a peculiar class of human cattle popularly called "land sharks." They subserve a not unuseful purpose as affording a means for venting the superfluous spleen of the neighborhood and as being invulnerable objects for the imprecations, maledictions and general abuse of the public at large. Their special delight is the worthless tax title, and their traditional victim the defenseless widow. I do not think they deserve all the abuse they receive; but it does not seem to do them any harm. They aid the government in collecting its taxes, because when people neglect or refuse to pay the taxes assessed upon their lands they are always ready and willing to pay the taxes for them by buying the lands at the tax sale. With the tax title they thus acquire they proceed to harrass the owner, and they invariably succeed in getting their money back with a goodly allowance for "interest and expenses." People are thus rightfully afraid of them, and it is safe to say that were it not for their presence everywhere there would be more taxes unpaid than there is.

Let us suppose, what often happens, that owing to some misfortune or neglect, a farmer or other landowner finds one of these "sharks" in possession, for an insignificant sum, of a tax deed to his farm. What, under the circumstances, and in the light of what is above set forth, is it best to do?

The tax deed gives its possessor the right to commence an action of ejectment against the party in possession of the land. In that action the validity of the tax deed is determined. If the deed is found to be valid its owner will be given possession of the land. But as the chances are decidedly against such a result the holder of the deed will rarely commence suit. He is generally content to hold the deed without putting it to any valid test, hoping that

sometime before his deed outlaws the owner of the land will find it necessary to buy his title in order to perfect his own. As the existence of the tax deed is, to say the least, a flaw in or cloud upon the title of the land, which in case of a sale of the land would be objectionable to the purchaser, it is, of course, desirable to buy it if possible. If the holder of the tax title will take anything reasonable for it, that is if he will take what it cost him, with interest and a fair amount for his trouble, it will be best to buy it. If the tax title is obviously invalid it will still be policy to buy it if can be bought at a reasonable figure, for it would cost considerable to get it set aside. An invalid title may be set aside by filing a "bill to quiet title," as it is called, and this will cost generally from \$25 to \$50, or probably more. If the "shark" is very unreasonable and demands an enormous figure for his claim, it will be best to let him wait awhile. He may calm down in time. His claim will expire by limitation in fifteen years in most States, and in some States less. If the "shark" commences suit against you put your case in the hands of the best attorney in your community, and the probabilities are that the "shark" will compromise.

CHAPTER XXV.

THE LAW OF SALES.

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| 1. As Applied to the Purchase and Sale of Farm Products, Etc. | 13. Warranty of Goods. |
| 2. What is a Sale. | 14. Express Warranties. |
| 3. The Thing sold. | 15. General Warranty. |
| 4. Contracts of Sale Must Sometimes be in Writing. | 16. Warranty of Horses. |
| 5. Form of Memorandum of Sale. | 17. Written Warranties. |
| 6. Form of Contract of Sale. | 18. Implied Warranties. |
| 7. Goods, Wares, and Merchandise. | 19. Purchase of Spurious Goods. |
| 8. Acceptance and Receipt. | 20. Sale of Fruit Trees and Other Nursery Stock. |
| 9. When Title to Property sold Passes. | 21. Remedies for Breach of Warranty. |
| 10. Cases Where Title Does Not Pass. | 22. Rights and Remedies of the Seller of Goods. |
| 11. When the Title does Pass. | 23. Stoppage of Goods in Transitu. |
| 12. Condition. | 24. Rights and Remedies of the Buyer. |

1. As Applied to the Purchase and Sale of Farm Products, Etc. This branch of law is of great importance to traders and commercial men generally, being the legal basis of all their transactions, but it is scarcely less important to farmers and mechanics, for it underlies and determines many of their rights and liabilities. In the purchase of farm supplies, the sale of farm products, and the sale of mechanics' and craftsmen's wares, it is of constant application; and perhaps of the entire business transactions of an average community, more are regulated by the principles of this department of law than by those of any other. The subject is therefore well worthy of study by the industrial classes.

NOTE.—The writer desires to express his grateful acknowledgment to Mr. William L. Carpenter of Detroit, for valuable assistance in the preparation of this Chapter.—H. A. H.

2. What is a Sale. To constitute a valid sale there must be a concurrence of the following elements, viz.: 1. Parties competent to contract. 2. Mutual agreement or assent. 3. An article or thing the property or title of which is transferred from the seller to the buyer. 4. A price in money, paid or promised. That it requires competent parties and mutual assent to effect a sale is manifest from the general principles governing all contracts as set forth in the first chapter of this book. The third and fourth essentials require some explanation. A sale is a transfer of a *general* or *absolute* interest in, or title to, the thing sold, and not a *special* or particular interest. For example: A farmer borrows a plow to use, or he has the custody of a horse with power to sell it, or property is left with him as security for a debt, he has only a *special* interest in such property, and the transaction by which he acquires that interest is not a sale.

In regard to the element of price, it must be *money*, either paid or promised. If the consideration for which the thing is sold be anything else it is not a sale. If property be exchanged for property it is a *barter*, and if property is exchanged for work or rent it is not a sale, though the legal effect of such special contracts are generally the same as in the case of sales.

3. The Thing Sold. The thing sold must be something in existence or capable of being brought into existence. If it is supposed to be in existence and as a matter of fact it is not, then the sale is void, and no rights or liabilities arise or attach to either the seller or buyer. For example: If I sell a ship that is on the ocean at the time of sale, and it turns out at that time the ship was lost, the sale is void. I cannot be required to deliver the ship or pay damages, nor can the buyer be required to stand the loss. The transaction is simply void. If money has been paid it must be paid back. (9 Exch., 101.)

Sales of Things not yet Made or Owned by the Seller. Unlike the case just mentioned where the thing sold has passed out of existence, sales of things not yet in existence are valid. These things the law divides into two classes, one of which may be sold, the other can only be the subject of an agreement to sell. The class which may be sold embraces all things which are the natural product or increase of something already owned by the seller, as, for instance, the crops that will grow on his fields, the wool to be clipped from his sheep, the apples to be picked from his

trees, and the like. But only an *agreement to sell* and not an actual sale can be made of those things which are to be afterwards acquired by the seller,—as the wool of any sheep he may buy, or any goods that he may purchase at a future time. The importance of this distinction between these two classes rests on this fact that, if the seller of goods, respecting which only an agreement to sell can be made, refuses to carry the sale into effect when the property reaches the condition to be sold, then the buyer will acquire no title or interest in them. All that he can do is to sue the seller for breach of contract. But in the case of the first class, the sale being absolute, the title passes at the time of sale, and no new act by the seller is necessary to complete the sale. If the seller refuses to deliver, the buyer can take possession just as he could of any other property belonging to him. (110 Mass., 303.) To illustrate: A farmer sells a crop of growing wheat, both parties to the contract intending that the title shall be transferred at once, the property in the wheat at once passes to the buyer, and when the crop ripens he has a right to harvest it without any further consent on the part of the seller. But on the other hand suppose a farmer sells a crop of wheat on a farm that he contemplates buying; he afterwards buys the farm, the crop ripens, and he refuses to allow the purchaser to harvest it. In this case the property in the wheat not having passed, the only remedy the purchaser has is to sue the seller for damages.

4. Contracts of Sale Must Sometimes be in Writing. At common law a verbal contract of sale was always valid and binding. But among the requirements of the Statute of Frauds (previously referred to, page 35), which is now in force in all the States, is one which provides that “no contract for the sale of any goods, wares or merchandise, for the price of \$50 or more shall be allowed to be good, unless the buyer shall accept part of the goods so sold and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or some note or memorandum in writing of said bargain be made and signed by the parties to be charged by such contract, or by their agents thereunto lawfully authorized.”

If the contract price of the articles sold is less than \$50 an oral or verbal contract is binding; but if it is \$50 or over, then the contract must be in writing, or the articles must be delivered, or paid

for in whole or in part, otherwise the contract can not be enforced and no rights or liabilities attach to either party.

The following forms will be found sufficient to cover the requirements of this statute in ordinary cases:

5. Form of Memorandum of Sale:—

John Brown and Peter Jones agree as follows: John Brown is to sell to Peter Jones 300 bushels white winter wheat at \$1 per bushel, and to deliver the same at the mill of Peter Jones, between the first and twenty-fifth day of September next. Peter Jones is to pay for the said wheat on or before the first day of October next.

Dated August 1, 1884.

JOHN BROWN,
PETER JONES.

6. Contract of Sale:—

GENERAL FORM.

This agreement, made this — day of —, 188—, between A— B—, of —, and C— D—, of —, Witnesseth: That the said A— B—, in consideration of the agreement hereinafter contained to be performed by the said C— D—, agrees to sell and deliver to the said C— D—, at his store-house in —, (here describe goods, their quantity and quality), on or before — day of —.

That the said C— D—, in consideration thereof, agrees to pay the said A— B— the sum of — dollars per — for the said — immediately upon the delivery thereof.

Witness our hands this — day of —, 188—.

A— B—.

C— D—.

An important question arising under this enactment is whether contracts for the manufacture of articles are required to be in writing, if for over \$50. The authorities are almost hopelessly in conflict on this question, but the following may be regarded as the most reasonable rule, and the rule which seems to be fast gaining the assent of our highest courts: If the contract is intended to result in transferring, for a price, a thing or chattel in which the purchaser had no previous property, it is a contract within the statute, and must be in writing or the statute in some other manner complied with, otherwise the contract will not be binding. But if the purchaser furnishes the material out of which the chattel is to be made, then it is a contract for work and labor, and is not covered by the statute. (1 Best & Smith, 272; 14 Mich., 271.) To illustrate: A farmer orders a wagon made according to certain specifications, for which he agrees to pay \$80. By the above rule this is a contract for the sale of a chattel, and neither party is bound by it unless the statute of frauds is complied with. A blacksmith,

therefore, who takes a farmer's order for a wagon should have the order reduced to writing and signed by the farmer; or it would be better if both should sign it, then it will be mutually binding.

7. Goods, Wares, and Merchandise. Questions sometimes arise as to what things are included under the above terms. Chattels of all kinds fall under such a description, and all of the crops grown by the farmer which are the result of his yearly labor; that is all annual crops which are sown and gathered each year, such as wheat, corn, potatoes, and oats. These are "goods, wares, and merchandise," and their sale is governed by the principles above laid down. On the other hand those crops which are the natural growth of the soil, such as grass, timber, fruit on trees, to which the annual labor of man only contributes partly, are not "goods, wares, and merchandise," but are while still on the soil interests in the land itself, and a transfer of title to them can be accomplished only by such formalities as are necessary for transferring title to the land. The moment however that they are severed from the land they become chattels and pass under the former rule. To illustrate this, suppose that a farmer desires to sell a crop of apples still on the trees, or the timber standing in a certain wood-lot. He must do it by giving a regularly executed deed of the apples or the timber, just as he would of the land itself, otherwise no binding or enforceable sale will be made. But were he to sell a crop of corn, which is of annual growth, no writing would be required at all, unless the price exceeded \$50.

8. Acceptance and Receipt. By receiving and accepting the goods sold, or any part of them, the statute is complied with and the contract rendered binding, but there must be both acceptance and receipt. There may be an acceptance without a receipt, or a receipt without an acceptance, and in neither case will the contract be binding. To constitute a receipt and an acceptance the goods, or some part of them, must come into the possession of the buyer, and he must do some act in relation to them after he has had the opportunity of rejecting them. If after he has had such an opportunity he exercises *any* act of ownership over them it amounts to an acceptance. To illustrate: A farmer delivers wheat to a miller at his mill. That is a receipt. The miller examines the wheat and empties the bags into his bin. That is an acceptance. After that is done, and not till then, or until some other similar act is done, the contract is binding, the sale is made. This rule

applies whether the contract comes within the Statute of Frauds or not. (3 Gray, 333; 118 Mass., 145.)

The contract will be binding if the requirements of the statute are complied with at any time after it is made. Though not binding when made, it will become binding when reduced to writing and properly signed, or when part payment is made and accepted, or when receipt and acceptance take place. To illustrate: A farmer sells 1000 bushels of wheat at \$1 per bushel by a verbal contract; 10 bushels are delivered and accepted by the buyer, the whole contract then becomes binding. Or if a memorandum is made the contract becomes binding upon the one who signs. If but one signs, only the one who signs can be sued; therefore in order to make the contract mutually binding each party should insist on the other's signing it.

9. When Title to Property Sold Passes. It is often very important to know just at what moment the title to property being sold passes from the seller to the buyer. If, for instance, the property is suddenly destroyed the question as to who shall stand the loss depends upon who owns the property at the time. For the purpose of determining this, contracts of sale are divided into two classes,—executed and executory. In an executed contract the moment the contract is concluded the property in the thing sold passes to the buyer; while in an executory contract the title of the property remains in the seller till the contract is executed. The first is really a sale, the other only an agreement to sell. To distinguish these classes and to determine when the contract is consummated the following rules may be made use of. 1. If it is the intention of the parties that the transaction shall be a sale, then it will be such, and the title will pass at once, and if such intention is clearly manifest it matters not what situation the property may be in. The title to it will pass, though there may be no actual delivery of it, or though it may be located in a distant part of the country or the world. If the intention is not expressed in words or writing it may be gathered from the acts of the parties or from surrounding circumstances; but it must be made clearly manifest or this rule will not apply. Perhaps in the great majority of cases the intention is not clearly manifest, hence rules for determining it are needed. 2. Where there has been no manifestation of intention, if a specific thing has been agreed upon and is ready for delivery, the law presumes that the contract is an actual sale; but if

the goods are not specific, or if when picked out or specified, anything remains to be done by the seller to put them in a deliverable shape, or to ascertain their value or price, then the law presumes that the transaction is a contract of sale and is not to become a sale until delivery and acceptance. To illustrate: If the farmer says to the drover, as they stand looking at the farmer's cow, "I will sell you that cow for \$25," and the drover says, "I'll take her," that concludes the sale; and if while the drover is counting out his money the cow is suddenly killed by lightning, it will be the drover's loss. It is seen from this that payment of the money is not essential to pass the title. But if it is understood that the sale is to be for cash, the purchaser, though he may acquire title, will have no right to take the property without payment or tender. It would be otherwise of course if by the terms of the contract credit was given.

The mere fact that after the property has been appropriated, that is, pointed out in a deliverable condition, the duty remains on the seller to deliver the same at some place agreed upon, will not prevent the title from passing. A lumberman once sold a bill of lumber in his yard, the lumber being selected and paid for, the seller agreeing to deliver the same at the railway station. Before he could so deliver it, it took fire and burned up, and the court held that the title had passed and that the loss fell upon the buyer. (25 N. Y., 520.) In another case lumber was sold at a price to be afterward determined; it was duly inspected and set aside awaiting delivery upon the purchaser's boat when it should arrive. While so situated it was destroyed by fire without fault on the seller's part, and the court held that the title had passed and the loss was the buyer's. (24 Mich., 486.) In these and all similar cases title passes at time of sale. As further elucidating this subject we perhaps can not do better than to group the instances where title does not pass at time of sale.

10. Cases Where Title Does Not Pass. 1. There is first the case above referred to where something remains to be done by the seller to put the property in shape for delivery as required by the contract. This is illustrated by a case in Massachusetts where R. bought of F. a large quantity of fish lying in two piles. They were to be paid for 30 days after delivery and F. was to dry the fish before delivery. It was held that the fish remained the property of F. (111 Mass., 10.) Or take the case of a farmer who

should sell a bin of wheat which is to be cleaned before delivered. It would remain the farmer's property until cleaned and ready.

2. Where something remains to be done to the goods by the seller, or by both parties, for the purpose of ascertaining the price of the goods, where the price is to depend upon their quantity or quality, the title will not pass until that thing has been done. To illustrate this another actual case may be cited. L. bought of E. all the prime lumber in his yard at certain specified prices for each quality, and paid \$500 on the purchase price. L. was to pay the balance at a future date. Before the assortment, inspection or delivery of the balance it was burned. Held that the property in it had not passed, and the loss fell on the seller. (27 Mich., 324.) Or suppose a farmer sells a bin of beans, at \$1.50 per bushel for the choice, and 15 cents per bushel for the culls, after sorting. The title to the beans would not pass until the beans were sorted and ready for delivery, and if in the meantime they burned it would be the farmer's loss.

3. Where the thing is not specified or definitely pointed out at time of sale, as a wagon to be made, or 100 bushels of wheat out of a bin containing a larger amount, the title will not pass. W. bought of B. 15 of the best sheep in his flock. The sheep were not picked out at the time, and before they were selected a controversy arose as to whether the title had passed to the seller, and the court held that it had not. (24 N. H., 336.)

11. When the Title Does Pass. If the title does not pass at the time the sale is made it is important to know just when it does pass, so that in case the property is lost it may be known upon whom the loss falls, and trouble thus be avoided. So much depends upon the circumstances of each particular case that it is difficult to give any general rule of great practical value. The title will pass when, and not till when the goods have been selected and set apart for the purchaser in accordance with the terms of the contract. The difficulty in applying this rule is to determine who by the terms of the contract is to make the selection. It may be the buyer who has this authority, or it may be the seller, or it may be both. To determine who is to make the selection the following rule may be of service. The party who by the terms of the contract is to do the first act, which can not be done till after the selection is made, has authority to make the selection.

To illustrate: A farmer orders from a seed merchant a pack-

age of turnip seeds, to be sent by mail. It is obvious that the mailing of the seeds is the first act to be done after the sale is made. This act by the terms of the contract is to be done by the seller, and he therefore is to make the selection. Consequently the selection of the seeds and mailing of them by the seed merchant passes the property to the farmer, and if they are lost in the mails it is the farmer's loss. And, generally, it may be stated, that where goods are ordered from a distance to be shipped by a carrier, as by freight, mail or express, delivery to the carrier by the seller, passes the title to them. Of course if the goods do not comply with the order no title passes, unless they are accepted by the buyer after he has inspected them, all of which is explained further on. On the other hand a farmer sells to his neighbor a barrel of apples to be picked by the neighbor from the tree on which they are growing. Here the buyer is to do the first act, and therefore he is to make the selection. When the apples are picked the title passes.

12. Conditions. By a condition in a contract of sale is meant some stipulation, the non-performance of which will justify a repudiation of the contract. There is, for instance, in the case of a *sale by sample* an implied condition that the goods delivered shall correspond with the sample. If they do not the buyer is justified in repudiating the contract and refusing to take the goods. Or if the goods are ordered by description they must substantially conform to the description or the buyer can not be compelled to accept them. Again if goods are sold on trial or approval, the buyer has a reasonable time in which to try them, and until he accepts, or until the lapse of this reasonable time, the title remains in the seller. To illustrate: A farmer buys a mowing machine with a stipulation that if the machine does not, on ten days trial, meet his approval he shall not be bound to keep it. During the ten days the machine remains the property of the seller. The farmer can change his mind as often as he chooses about keeping it, and he can refuse to accept it for any reason satisfactory to himself. But if he continues to use it after the ten days have transpired, it will be an acceptance and he will be bound to pay for it. So, too, in the case of sale by sample or description, if the non-compliance of the goods with the sample or description can be ascertained by inspection, the purchaser is bound to so ascertain it at once and refuse to accept the goods, otherwise his retention of

the goods will be an acceptance of them. To illustrate: A farmer orders from a distant factory a four spring buggy; a three spring buggy is shipped to him. He takes it from the depot and uses it for several days. This amounts to an acceptance and it becomes his.

In the case of a "*Sale or Return*," that is where property is bought with the privilege of returning it if the purchaser does not like it, the title passes at once to the purchaser with the right of revesting it in the seller at his option. As for instance where the farmer buys a pair of boots with the privilege of returning them if they do not fit; they become his boots as soon as he takes them. There is thus a distinction between the cases where the purchaser has an option to *keep* the goods if he likes them and those where he has an option to *return* them if he does not like them. In one class of cases the buyer does not own until he approves, in the other he does own until he disapproves. (100 Mass., 198.) To illustrate: A farmer buys a harvester under a contract authorizing him to *return* the same if it does not work to his satisfaction. If the harvester is destroyed by any accident it is the farmer's loss, but as has been illustrated in the case of a sale on approval, if the harvester were bought with the privilege of trying it and *keeping* it if satisfactory, it would remain the property of the seller until the buyer had done some act signifying approval. Reflection will be necessary to determine under which of these two classes any particular sale falls. (104 Mass., 362; 50 Ala., 329.)

13. Warranty of Goods. A *warranty* is an agreement that the article sold possesses some stated qualities. It is an agreement the breach of which entitles the purchaser to damages; it differs thus from a condition which if broken sets aside the contract and prevents the sale from taking place. Non-compliance with a warranty leaves the contract of sale still standing and binding, while non-compliance with a condition renders the sale void. Warranties are either *express*, that is stated in words or writing, or they are implied, that is raised by the law.

14. Express Warranties. No special form of words is necessary to make an express warranty. Any statement made by the seller at the time of sale will be a warranty, if so intended. The seller of a piano stated at time of sale that the piano was "well made and would stand up to concert pitch." This was held to be

a warranty. (6 Allen, 413.) A decisive test to determine whether a statement will amount to a warranty is whether the statement is of a fact of which the buyer is ignorant, or is only an opinion or a judgment which either party can give. The former is a warranty, the latter not. Of course the ordinary bandinage of trade, and the customary chaffing or praising which sellers sometimes indulge in are not warranties. The maxim, *Caveat emptor*, "let the purchaser beware," is the general rule; but when the seller states as a fact something which the buyer is not in a position to know, then he is as much bound to see that such statements are fulfilled as if he in words says he warrants them true. It is seen therefore that it is not necessary to use the words "I warrant," or "I guarantee," or any similar expression in order to create a warranty, it being sufficient if there is a statement of facts *intended* as warranty. An excellent illustration of this is an English case (5 M. & R., 124), in which the seller of a horse had told the buyer that "the horse was sound to the best of his knowledge," but refused to warrant, saying, "I never warrant. I would not even warrant myself." It was afterwards found that the horse was unsound and that the seller knew it, and it was held that the language used constituted a warranty of soundness and that the seller was liable.

15. General Warranty. Where the seller simply says, "I warrant the thing," or "I warrant it sound," that is a general warranty. Such a warranty does not extend to defects apparent on a simple inspection, nor to defects known to the buyer. To illustrate: A general warranty, or warranty of soundness of a horse would not be broken by the fact that the horse could not see out of an eye that was obviously gone, and the buyer knew it was gone. If, however, the apparent defect is one which may or may not be an indication of serious consequences, the warranty will be broken if those serious consequences develop. To illustrate: A horse was once sold, warranted "sound wind and limb." The horse afterwards proved to be permanently lame from the effects of a splint on the fore leg, which was apparent at time of sale. It appeared in evidence that there were two kinds of splints, one of which caused lameness and the other not. It was held that as the result could not be told from an inspection of the splint at the time of sale that the seller was responsible under his warranty. (8 Bing., 454.)

16. Warranty of Horses. It is very common for horses to

be sold warranted "sound." It is therefore important to know what will be a breach of this warranty of soundness in horses. The rule laid down is that any disease or accident which makes the animal less capable of work, or which diminishes his natural usefulness, or which will in its ordinary progress have these effects, is an unsoundness, and hence a breach of the warranty. Such for instance as "bone spavin in the hock," "ossification of the cartilages," "thick wind" and "roaring," have been held to be "unsoundnesses;" but "crib biting," "mere badness of shape," "hocks which render the animal liable to curb," and "thin soled feet," have been held not to be unsoundnesses.

17. Written Warranties. If the contract of sale is in writing, the warranty, if any, must be contained in it, for it cannot be shown that any warranty not contained in the writing was made. If the contract of sale is not in writing the warranty need not be, and whether or not there was a warranty will be gathered from all the circumstances, the acts, sayings, and conduct of the parties at the time of sale.

Unless the language of the warranty expressly includes it, the warranty will only cover defects which exist at the time the warranty is made. But defects which do not exist at the time of sale may be guaranteed against by express words, as where a watch is warranted to run for five years, or anything else is warranted for a definite time.

18. Implied Warranties. 1. *Of title.* When one sells goods which are in his possession at the time of sale, he by so doing warrants that the title which he conveys is a valid and perfect title, and if the purchaser loses the goods, by reason of the title proving defective, he can recover from the seller the price paid for the goods and damages for breach of contract. If the goods at the time of sale are in the possession of a third party there is no implied warranty of title, and the purchaser must take his chances. If the title fails he has no remedy, unless there was fraud or an express warranty.

2. *Implied Warranty of Quality.* As has been stated, *Caveat Emptor*—"let the purchaser beware"—is a maxim of the common law. The buyer, in the absence of any fraud practiced upon him by the seller, takes his chances upon the quality of the goods he buys, unless there is an express warranty, except in certain cases

as below set forth. Under the following circumstances the law will raise an implied warranty of quality:

1. In the case of sale by sample there is an implied warranty that the quality of the goods delivered shall be equal to that of the sample.

2. Where goods are sold by description and there is no opportunity for the buyer to inspect them, there is an implied warranty that they are *salable* and *merchantable*. To illustrate this point: A farmer orders a sack of Java coffee. It is shipped to him, opened, and after using it he discovers that it has been spoiled. Under these circumstances the merchant from whom it was ordered will be held to have warranted that the coffee was good and salable, and he will have to pay the damage caused.

3. Where an article is sold for a specific purpose known to the seller, who undertakes to supply it for that purpose, there is an implied warranty that it is reasonably fit for the purpose. To illustrate: A coach maker furnished a carriage pole; the pole broke because not reasonably fit for the purpose, though from a defect not apparent; it was held that the coachmaker was responsible for the damage. (Law Reports, 2 Q. B., 102.) This principle fixes the liability of manufacturers who furnish machinery to perform a certain purpose. To illustrate: A farmer orders from a manufacturer a pump for use in a well 80 feet deep. By sending a pump to fill this order the manufacturer impliedly warrants that the pump will answer the required purpose. If, after the pump is put to use, the farmer finds that it will not work, that it will not raise water that distance, or for some other reason will not answer, it is then the manufacturer's duty to remedy the defect or pay for the trouble and damage caused.

19. Purchase of Spurious Seeds. The farmer is often most seriously damaged by buying worthless farm and garden seeds. Many seeds will not grow well if kept over one year, and an inspection of them will not show whether they are good or whether they are old and worthless. There is no test which the farmer can readily apply to determine whether they are good or bad. Consequently if the seed merchant sells him old seeds, which have been left over from the last year's stock, the farmer may have the trouble and expense of preparing his land and sowing his crop for nothing. Again, some kinds of seeds are difficult to distinguish from others. Cabbage and turnip seeds are very similar in appearance. If the

farmer prepares his soil for a crop of turnips and the merchant sells him cabbage seed, which he can not by inspection distinguish from the turnip seed, it will probably result in a loss of his entire labor and expense in getting the soil ready, and of course it will cut off his expected profits. His damages may amount to many dollars, and it is therefore desirable to know his rights in the matter. The sale of seeds falls under the second principle above laid down, namely the sale of goods by description. Goods so sold where there is no opportunity of inspection, or where an inspection will not reveal their worth, are impliedly warranted to be good and merchantable. Very few seeds are of such a character that the most careful inspection will reveal their true worth. Where, therefore, they are labeled and sold for a given variety there is usually an implied warranty that they are as represented and that they are good. (69 N. Y., 65.) The usual measure of damages for breach of warranty is the difference between the value of the thing as furnished and the value it would have if as warranted. This rule generally works justice,—but in the case of a sale of worthless seeds, a recovery of the difference in intrinsic value of good and bad seeds, or even a recovery of all that had been paid for the seeds, would fall far short of the farmer's actual loss, whose labor for the entire season upon a given field may have, for that reason, practically come to naught. On this account the decisions have made exceptions in the case of seeds to the general rule, and the measure of damages in such cases seems now to be the value of the crop that would have grown had seeds been as warranted, less the expenses of raising the crop and the value of the crop actually produced. (34 N. Y., 634.) Profits which certainly would have been realized except for the seedman's default may be shown and recovered as damages. In other words, one may now recover the reasonable profits of his crop had the seeds been good. To avoid this liability seedsmen now generally print upon their packages a notice that they do not warrant the seed. If this notice is brought to the attention of the buyer, and is given in good faith by the seedman, it may have that effect. But if the seller knows that the seed is bad, and he sells it with such notice, he will be liable for fraud and the measure of damages will be the same, or greater.

20. Sale of Fruit Trees and other Nursery Stock. Similar to the sale of spurious seed is the sale of young fruit trees or other nursery products which are not of the kind represented. A

farmer decides to plant an orchard. He buys the young trees from a neighboring nurseryman; sets them out, and carefully keeps them tilled, pruned, and trained for ten or twelve years until they begin to bear. If he then finds that they are not the kind ordered, but are of a totally worthless variety, his loss is serious indeed. But by ordering a given variety from the nurseryman, who undertook to fill the order, he obtained from the nurseryman an implied warranty that the trees were good and merchantable, and of the kind ordered, and the nurseryman is bound to make good the loss. The measure of damages would be similar to that used in the case of the sale of worthless seeds.

21. Remedies for Breach of Warranty. Where the goods sold do not turn out to be as warranted, the buyer, as a remedy, can sue the seller and recover such damages as equal the difference between the value of the goods as delivered, and the value of them if they had been as warranted. This, as above stated, is the *general* rule. To illustrate it: A horse is sold warranted *sound*. It turns out that the horse has an ailment rendering him permanently lame. As warranted, he would be worth \$200. In his actual condition he is worth but \$50. The buyer can recover the difference as damages, namely, \$150. In certain cases it has been held that where an article has been sold to answer a certain purpose, with an agreement that if it does not it shall be made to do so, and it does not, on trial, answer the purpose, and the seller fails to make it so, the buyer can return the article and recover, as damages, the contract price and also the actual damage sustained. (35 Mich., 310.) ✓

22. Rights and Remedies of the Seller of Goods. If the buyer refuses, without legal cause, to accept goods properly tendered him in fulfillment of the contract, the seller can sue him and get as damages the difference between the value of the goods at the contract price and the value at which the seller can then dispose of them. To illustrate: A farmer contracts his wheat at \$1.10 per bushel. At the time fixed for delivery wheat has fallen to 96c per bushel, and the buyer notifies the farmer that he won't take it. The farmer can sue and get as damages 14c on each bushel of wheat contracted for. (12 Met., 482; 5 N. H., 307.) Or to illustrate further: Suppose a farmer contracts to buy ten tons of plaster at \$5 a ton, which is duly shipped to him by freight. Upon its arrival at the time of delivery, the farmer declines to take

it. He perhaps may have lost faith in plaster and concluded that he rather pay damages than to have the stuff on his place. The dealer can recover as damages the difference between the contract price and the value of the plaster at the place where it then is. If it has no market value there the damages will include what it will cost to take it to some place where it has a market value, unless he can sell it for more where it is. The seller is always bound, under such circumstances to do the best he can with the goods, and to make his damages as small as possible; and if he fails to do so, he will have to stand the increased loss himself. If the property in the goods has passed to the buyer, and the goods remain in the custody and possession of the seller, and the buyer refuses to perform any condition required to be performed by him before the goods are delivered, the seller can refuse to deliver the goods, and can sue the buyer for the price of them, keeping the goods for the buyer until the termination of the suit; or he can resell them, and hold the buyer for the difference between the price at which he sold them and the price the buyer agreed to pay; or he can keep the goods as his own, and recover the difference between the contract price and the price at which he can again sell them. To illustrate: A farmer sells 200 cords of wood in a deliverable condition at \$3.00 a cord, to be drawn away by the buyer within two weeks, the buyer to pay for the same before drawing them away. The buyer refuses to make the payment. After the lapse of the two weeks, the farmer can sue the buyer for the price of the wood, keeping the wood subject to the buyer's order till the termination of the suit, and collect the full contract price as damages; or he can sell the wood to another buyer, taking care to sell it at the best possible price, and recover as damages the difference between the price at which he sold and the \$3.00 per cord; or if he prefers to keep the wood himself he can recover the difference between the \$3.00 per cord and what the wood will bring.

23. Stoppage of Goods in Transitu. In general the delivery of goods by the seller to a railroad company, steamboat line, or other carrier, in conformity with the buyer's orders, passes the property to the buyer beyond the control of the seller. But if the buyer becomes insolvent while the goods are on the way and before they pass out of the carrier's hands, the seller may retake them or stop them and hold them until they are paid for. This is what is called "*stoppage in transitu.*" It can only be exercised

when some part of the price of the goods remains unpaid, and when the buyer becomes insolvent (by which is meant a *general* inability to pay his debts), and also while the goods are in transit. To illustrate: A farmer, in conformity with a contract of sale, ships a car of wheat to a merchant in a distant city. The price of it is to be paid at a future day. While the wheat is still in possession of the carrier, the merchant fails, or becomes insolvent. The farmer may and should at once telegraph the agent of the carrier to hold the wheat subject to his order, and the carrier will be obliged to do so. (106 Mass., 67.)

24. Rights and Remedies of the Buyer. If the property in, or title to, the goods, still remains in the seller, and he refuses to deliver the same under a valid contract of sale, the only remedy of the buyer is to sue him for damages. And, in general, he will recover as damages the difference between the contract price and the market value of the goods, that is, the price at which he can get them elsewhere. To illustrate: A farmer contracts to buy from a brickmaker 50 thousand brick, at \$4.00 per thousand, to be delivered in February. Before that time brick go up to \$6.00 a thousand, and the brickman, having, perhaps, in the meantime, sold all his brick at the advanced figure, cannot complete his contract. The farmer can recover as damages \$2.00 per thousand for the brick contracted. The fact that the article bought has been, in reliance upon the contract, sold at a higher price, or the fact that its non-delivery occasions increased damages—as if it were part of the machinery of a mill which must lie idle in consequence—will not usually alter the general rule. These damages are regarded as accidental, and the law does not charge them to the seller. But if the seller *knows* when the contract is made that the non-delivery of the goods bought will result in such extra or accidental damages to the buyer, though there is some conflict among the cases upon the point, the weight of authority is that they can be recovered as part of the damages. (40 N. Y., 422.)

If the goods tendered by the seller to fill an order do not answer the required description, the buyer, as has been stated, can reject them, and if the seller has no further time to comply with his contract, the buyer can sue him and recover damages according to the general principles above laid down.

CHAPTER XXVI.

COMMON CARRIERS. DUTIES OF PERSONS ENGAGED IN CARRYING GOODS AND PASSENGERS.

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| 1. Who is a Common Carrier. | 9. Different Rule of Liability for Carriers of Persons. |
| 2. Duty of a Carrier of Goods. | 10. Evidence of Negligence of Carrier. |
| 3. Carrier of Goods Insures their Safe Delivery. | 11. When Liability to Passenger Commences and Ceases. |
| 4. Limitation of the Above Rule. | 12. Carrier Must Carry all Impartially. |
| 5. Special Contracts Limiting Carrier's Liability. | 13. What Excuses for not Carrying are Valid. |
| 6. When Carrier's Liability Begins. | 14. Rules Adopted by Carriers. |
| 7. When Carrier's Liability Ceases. | |
| 8. Duty of a Carrier of Persons. | |

1. Who is a Common Carrier. Judge Cooley in his work on "Torts" (page 638) gives this definition of a common carrier: "One who regularly undertakes for hire, either on land or water, to carry goods, or goods and passengers, between different places for such as may offer." This includes express companies, railway companies, steamboat companies, etc., but it does not include those carriers who have no regular route and who only carry under particular contracts. A common carrier may be a carrier of all kinds of goods or only of one or more particular kinds. Thus an express company is not a common carrier of grain in bulk, nor a railway company of money packages.

2. Duty of a Carrier of Goods. In general a common carrier is required to carry all goods of the classes which he has been accustomed to carrying, or which he proposes to carry. He must receive and carry for all who offer, without discrimination or par-

tiality. He may make special bargains in exceptional cases for carrying at reduced rates, but he must not carry for one on terms which he will not give to all. He may carry at a reduced rate for persons who will relieve him of some of his liabilities as a common carrier, providing he will do the same with all; but he cannot carry at a reduced rate for one who ships more freight than another. To allow discrimination in favor of the larger shipper would disable the smaller shipper from competing with him, and would practically result in giving a monopoly of trade to the larger shipper. This is why the courts have decided that such discrimination is illegal. The farmer therefore has a right to insist that a railway company shall carry his single car load of wheat on the same terms on which it carries each of the hundreds of car loads shipped by the wheat buyer from the same place of shipment.

3. Carrier of Goods Insures Their Safe Delivery. In the absence of a special contract the obligation of a common carrier is to accept and promptly transport all goods of the class which he carries and deliver them without damage, unless prevented by the act of God or of the public enemy. He becomes in fact an insurer of the goods against all losses except such as result from "the acts of God"—like violent storms, lightning, sudden floods, etc.,—or the invasion of a public enemy. If the goods are lost or injured the carrier must pay for them, whether he is to blame or not, unless the loss resulted from these two causes.

4. Limitation of the Above Rule. But this extreme liability does not extend to those slight losses which are occasioned by the natural wear and chaffing in transportation, nor to losses resulting from frost, fermentation, evaporation, decay of perishable articles, and other such natural causes. The carrier must exercise all reasonable care to prevent losses from such causes, and having done that his liability ceases.

Nor does the carrier insure against losses which result from the goods not being in a condition fit for transportation, nor from not being properly packed or put up for shipment. Losses from such causes are clearly the fault of the shipper and upon him they fall.

Likewise there is an exception to the rule in the case of the transportation of live stock. The carrier does not insure against injuries arising from their nature and propensities, which could not be prevented by foresight, vigilance, and care. Animals may die

from fright, they may injure each other, they may refuse to eat or drink, or they may sicken and die without apparent cause. In all of these cases the carrier will be relieved of liability if he can show that he has exercised that degree of care and diligence which the nature of the animals required, and that he provided suitable means of transportation, etc.

5. Special Contracts Limiting Carrier's Liability. Carriers may limit their liability by making special contracts with shippers to that effect. An agreement that the carrier shall not be held to the strict rule of an insurer is valid, and unless there is a statute requiring it to be in writing, it may be made verbally. But a notice posted up in the place or business of the carrier, or handed to the shipper, and to which the shipper has not given his assent, is not sufficient to limit liability. Though a receipt, given upon the delivery of the goods, which contains the terms of the contract of carriage has been held to be sufficient. The acceptance of a receipt may not therefore be always a wise precaution. The receipt will in most cases be found to contain a contract of carriage which in legal effect exempts the carrier from everything except the consequences of his own negligence. The depositor of a package with an express company who procures a receipt for it, has, according to very many authorities, entered into the contract set forth in the receipt, which contract usually so limits the carrier's liability that the shipper is left at his mercy. This doctrine that the taker of a receipt limiting the carrier's liability is bound by it, is a harsh one, and one that the growth of the law should and no doubt will modify. The Supreme Court of the United States has taken the correct view of this matter, which is that where the receipt is taken *merely as a receipt*, to preserve evidence of delivery, the liability of the carrier can not be thereby limited. (Railway Co. v. Manufacturing Co., 16 Wallace.)

6. When Carrier's Liability Begins. The responsibility of a carrier begins when the goods are placed in his hands for carriage. If they are sent to his warehouse or depot for shipment to a certain point, and are there destroyed by fire, he is liable as an insurer. But if the goods are in the carrier's hands awaiting orders from the shipper, the carrier is only responsible for loss or injury resulting from his negligence.

7. When Carrier's Liability Ceases. If the carrier is to transport the goods only over a part of the distance to their point

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of delivery, his responsibility ceases when the goods are turned over to the connecting carrier. If he is to transport them to the point of delivery, his liability ceases when they are delivered according to the custom of business at that point. If, according to that custom, the delivery is made at the place of business of the consignee, then the liability will not cease until they are so delivered. But if the custom is to deliver them at the warehouse of the carrier, the weight of authority is that the liability continues until the consignee is notified and has a reasonable time and opportunity to come and get his goods. For instance, if a carrier, like an Express Co., notified a consignee in the evening or after banking hours, that a package of money had been received for him, he would not be obliged to get it until the next morning. If thieves broke in and stole it meanwhile, the carrier would be responsible.

In all cases where goods remain in the hands of a carrier after his liability has ended, he is responsible for the damages resulting from his or his servant's negligence, but for those only.

8. Carriers of Persons, Their Liability, Etc. When we turn our attention from those who are engaged in carrying goods to those who are engaged in carrying passengers, we naturally expect to find the liability for safe carriage not decreased. As a matter of fact, however, we do find that while the carrier practically insures the safe transit of a car load of wheat, he is bound only to use due care in the transit of a car load of passengers. He insures the safety of your bushel of potatoes; he need only be careful of your wife and child. If the one be lost through the unavoidable breaking of a rail, he must pay for it. If the health or life of the other be destroyed by the same cause, no compensation can be obtained. The duty of a carrier of persons is to use that degree of care which the nature of his business requires. This, especially in the case of carriers by steam power, is the very highest degree of care, skill, and foresight for the safety of the passengers. All reasonable precautions in the conduct of the business, the securing of the most approved appliances, etc., must be observed. If an injury occurs and it can be shown that it was in any degree owing to any omission, neglect, or want of highest care on the part of the carrier or his servants, he will be held liable for the damage sustained. (Redfield on Ry's, § 149.) But where the injury occurs by reason of a defect which no degree of watchfulness on the part of the carrier could have prevented, he is clearly

not liable. (Angell on Carriers, § 534.) If the injury results in any degree from the negligence of the passenger, that is, if there is any contributory negligence on the part of the passenger, then there can be no recovery of damages. (Redfield Ry's, § 330.)

9. Reason for Different Rule of Liability of Passenger Carriers. The reason for this distinction in the rule of liability in the case of carriers of persons, is found in the fact that the law fixing the liability of carriers of goods grew up at a much earlier time and under very different circumstances from that fixing the liability of carriers of passengers. The liability of the carriers of goods was legally determined so long ago that no one knows when the first decisions were made. It was at a time, no doubt, when the roads of England were so beset by robbers and highwaymen that to have allowed the carriers to excuse themselves by simply showing due care would have tended to bring about conspiracies between them and the robbers. Such conspiracies were in many cases supposed to exist. It became necessary, therefore, to hold carriers to the strict rule of insurers in order to give any security to shippers of goods. The law determining the liability of passengers is of modern origin, the first decision being in 1791, and its growth is hardly yet completed. The reasons which existed for imposing the onerous liability on carriers of goods do not exist with respect to carriers of passengers, and the liability of the latter has therefore been placed upon the broad principle of negligence, above stated.

10. Evidence of Negligence of Carrier. In all countries and States where the common law is in force, with the single exception of the State of Michigan, the occurrence of an injury to a passenger in transit is *prima facie* evidence of negligence of the carrier. In a suit brought by an injured passenger all that need be proved is that the passenger was injured through the breakage of some instrumentality over which the carrier had control. When such proof is made it devolves upon the carrier to show that such breakage was in no manner due to his fault or negligence.

11. When Liability to Passenger Commences and Ceases. The obligations of the carrier to the passenger commence when the passenger enters upon the grounds of the carrier for the purpose of being carried, and they do not terminate until the journey is completed and a reasonable opportunity to leave the premises of

the carrier has been afforded. The carrier must therefore provide reasonable and safe means of access to and exit from whatever means of transit he furnishes his passengers.

12. Must Carry all Impartially. Like a carrier of goods he must carry impartially everyone who presents himself as a passenger, unless he has a valid excuse for not doing so. He must receive, carry, and bestow equal care upon every one who offers, no matter what his race, class, color, or previous condition may have been, and he will be liable for any damage resulting from a violation of this duty.

13. What Excuses for Not Carrying are Valid. There are certain reasons which will excuse carriers for refusing to take passengers. Among these are: 1. That there is a great and unexpected press of travel which has exhausted all their present means of transit. 2. That the would-be passenger will not conform to the reasonable regulations enacted by the carrier or other competent authority for the conduct of passengers; or 3. That he is grossly intoxicated, or is for any other reason unfit to be in a car with respectable people. It is not a sufficient excuse that the proposed passenger is a colored person, or a Chinese, or Indian. All races have equal rights in America. Nor is it a valid excuse that the traveler is possessed of a low moral character. Such person has the right to be carried, though the carrier must exercise vigilance to maintain good order and guard passengers from violence, danger, theft, or any other evil that may naturally be expected. Carriers have been held liable for moneys which a gambler defrauded of a minor while traveling. (31 How. P. R., 272.) But they are not liable for the acts of a mob which could not have been anticipated.

14. Rules Adopted by Carriers. Carriers may adopt reasonable regulations respecting their business and the conduct of passengers. Such rules must be observed by passengers, and a failure to do so gives the carrier a right to remove the offending passenger from the vehicle. (67 Me., 103.) Among such rules, and regarded as reasonable, is the rule that the passenger shall procure a ticket; that he shall show it when called upon to do so; that the ticket shall be used for only one continuous journey, etc. Though a passenger may be removed for a non-compliance with any proper rule, the carrier must see to it that no unnecessary force is used or injury committed.

CHAPTER XXVII.

LAWS CONCERNING FARM ANIMALS.

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| 1. As to Horses. | 7. Sale of Diseased Cattle. |
| 2. Horse Breakers, Their Rights and Duties. | 8. Brands and Ear Marks. |
| 3. Horse Breakers' Lien. | 9. As to Sheep. |
| 4. Stallions. | 10. Diseases of Sheep. |
| 5. Veterinary Surgeons and Farriers. | 11. Taking Sheep on Shares. |
| 6. As to Cattle. | 12. On the Sale of Wool. |
| | 13. As to Bees. |
| | 14. As to Hogs. |

The farm being the basis of our material prosperity has received constant and careful attention from our legislators. There are many legal provisions of great interest to the agriculturist which have not been included in the preceding chapters. Some of the most important of these will be found grouped in this chapter.

1. The Law as to Horses. From its high position in man's esteem the horse has been given a definite legal status by our laws. In the chapter on the Hire of Animals, the law governing the letting of horses for use will be found fully set forth, and the reader who is interested in this subject is referred to that chapter. Among other things equally important concerning the matter of horses are the following:

2. Horse Breakers, their Rights and Duties. One who employs a person to train or break his horse, is, in the absence of an express agreement between them, obliged to do everything reasonable on his part to accomplish that object, to hide no defects or peculiarities of temperament that might render the task difficult or dangerous, to accept the animal, when broken or trained, and pay the price agreed upon, or if none has been mentioned, to pay

a fair compensation. The trainer is bound to exercise due care, and he is liable for any negligence or for a lack of the skill required for the undertaking. The law implies a contract on his part, not only that he will use care and diligence, but that he possesses that degree of skill and knowledge which will enable him to properly perform the service. If he fails, and the animal is injured because of his ignorance or carelessness, he is bound to pay the damage done. (40 Ill., 210.) He will not be responsible for any injury resulting from any inevitable accident, or theft, or by reason of any disease, or from any fault or vice of the horse.

3. Lien of Horse Breaker. There is some conflict of authority as to whether, in the absence of a special statute, the horse breaker is entitled to any lien upon the horse for the amount of his services. The general rule is that he is. No lien will attach unless the horse has been given into the possession of the trainer. The same is true regarding the owner of a stallion, or in regard to veterinary surgeons and farriers; where the animals are given into their possession, they have a lien upon them for a reasonable charge for their respective services. Whenever the animals are voluntarily allowed to be taken from their possession the lien ceases.

4. Stallions. The owner of a stallion who keeps the same for use, is bound to possess and exercise such a degree of care and skill in the business as will prevent injury to mares which may be entrusted to him. If the stallion is vicious, and so known to be by the owner, and by his viciousness a mare is injured, the owner is liable. So also if the mare is injured through lack of the peculiar care and skill required of the one who "tends" the stallion, the owner is liable. The owner of the stallion has a lien upon the mare for the value of the service, and where the mare is delivered into his possession he may retain the same until his charge is paid. (4 Mees. & Wels., 283.)

5. Veterinary Surgeons and Farriers. The principles applicable to horse trainers apply to the case of veterinary surgeons and farriers. They are held to the exercise of ordinary care and diligence, and must possess sufficient skill and learning to properly discharge their duties. A veterinary surgeon impliedly holds himself out to the public as being skilled in his business and competent to care for sick or injured animals. His contract is not

that he will cure all animals entrusted to him, but that he will use all the known and reasonable means to effect a cure. If he does not do so he is liable in damages for the injuries resulting from his failure. Such damages are generally determined by a jury.

A farrier is held also to the same rules. He impliedly contracts in taking a horse to shoe, to do the work in a proper manner, and he is bound to possess the degree of skill, and exercise that care which will enable him to do so. If he lames the horse in shoeing it, an action will lie against him for the injury caused. He is regarded as being in the nature of a public agent, and he is bound to serve the public without discrimination. He has a lien upon the animal for his service.

6. The Law as to Cattle. There are many special statutes for the protection of cattle from disease. There have been acts of congress preventing the importation of cattle from foreign countries at various times when dangerous diseases have been known to prevail among cattle in other parts of the world. The statutes of the various States usually provide for the regulation or prohibition of the introduction into, or transportation through, the respective States of cattle affected by infectious diseases. Many of the States have commissions whose duty it is to make examination and to prohibit the importation of these cattle. These commissions usually have full power to enforce their regulations. Statutes of this character are constitutional, being for the general good. They can not be avoided on the ground that they are an infringement of the right of a citizen to acquire, use, and dispose of property. They come within what is called the police power of the State. Under this power the destruction of diseased animals is provided for, and the sale of animals affected by contagious diseases is prevented or made a misdemeanor and punishable as such. The reader should examine carefully the statutes of his own State upon this general subject.

7. Sale of Diseased Cattle. Apart from any statute, if one sells diseased cattle, fraudulently representing them to be free from disease, or concealing the fact that they are unhealthy and dangerous, he will be liable to the purchaser for the consequences.

Whenever property is sold for any purpose, especially if it be sold for food, the seller in making false representations concerning it will be held to have accepted the consequences that may reason-

ably result from such sale, and he will be held to a strict accountability.

8. Brands and Ear Marks. There are statutes in the western States generally providing that the owner of stock may adopt any distinctive mark or brand for his cattle, and such mark when properly adopted becomes his special property and can not be used by another without grave liability. Such marks must be recorded with some official, usually the county clerk, and they become evidence of ownership when branded upon cattle. Upon the sale of the cattle the mark must be counter-branded, which indicates that the transfer from the original owner has been valid.

The alteration of marks or brands upon cattle for the purposes of theft is made a serious offense.

9. The Law as to Sheep. Sheep are protected by the statutes in most of the States from the ravages of dogs. It is made lawful for their owners to kill any and all dogs caught in the act of worrying them, and the owners of such dogs are made liable, not only for the actual damage done, but often for a much larger amount, inflicted as a sort of penalty for the harboring of such dogs. This matter was touched upon under the sub-head "Dogs," found on page 160. When several dogs, belonging to several owners, unite in doing mischief to sheep, they are not jointly liable for the injury, but each is liable for the injury committed by his own dog. (2 Con., 206.) In determining what damage was caused by each the presumption is, in absence of proof to the contrary, that one dog did as much damage as another (20 Barb., 479), though the jury may consider the size, ferocity, and habits of each dog. (35 Barb., 303.) There are some cases holding that each owner is accountable for the whole damage caused by a sheep stealing expedition in which his dog is engaged. (63 Penn. St., 341.)

10. Diseases in Sheep. A person owning sheep affected with any contagious disease must see to it that the disease is not communicated to other sheep. If he knowingly sells a diseased sheep, concealing the fact of the disease, he will be liable not merely for the difference in value of the diseased sheep and a healthy one, but for the other damages that necessarily follow from it, which, if the disease were communicated to the whole flock of the purchaser, might be very large. (13 Wend., 518.) There are laws for the protection of sheep from infectious diseases

similar to those for the protection of cattle. The reader should acquaint himself with the statutes of the several States.

11. Taking Sheep on Shares. When sheep are "taken on shares" the question of the ownership of the increase may become important. The general rule is, that the increase of animals belongs to the person who owns the mother, but this is not the case when sheep are pastured, as they sometimes are, for a certain proportion of the lambs and the wool. In such case the owner and the agistor are tenants in common of the increase and of the wool until it is divided. Until the respective share of each is set apart to him they own the whole in common. The right of the agistor to his proportion, however, may depend upon the fulfillment of his contract. The condition, where none is expressed, upon which he is entitled to a share of the increase, is that he will exercise reasonable care and diligence in his keeping of the sheep, and he is held to a fair showing before any title vests in him. (16 Vt., 382.)

12. On the Sale of Wool. Because of the peculiar manner in which wool is packed it is difficult for the purchaser to make a thorough examination of it at the time of sale. The rule *caveat emptor* does not apply with so much strictness in sales of this kind as in others. The purchaser is not required to lay open each package to its center, but is allowed to rely upon the statements made by the seller. Such statements amount to a warranty; and if he remains silent when he possesses information which he ought to disclose he will be responsible for damages. (43 Cal., 110.)

13. Law as to Bees. Bees have become the subject of very important property rights, the industry of keeping them having grown to one of great proportions. When domesticated, the ordinary rules applicable to personal property apply to them. They are property and as such are taxable the same as other property. If they swarm and escape from their owner they are still his if he pursues them with reasonable promptness. (15 Wend., 550.) As to whether he would have the right to enter upon another's land to claim them seems to be established the same as in the escape of other domestic animals. (15 Wend., 550.) Judge Cooley says: "Possibly it might be held—as we think it certainly ought to be—that the owner of the bees might enter to retake them if he could do so without doing injury to the land, but the law would give

him no implied license to cut a tree for the purpose." (Cooley on Torts, p. 435, n. 5.)

As to wild bees the rules regarding wild animals are modified. Generally no one owns a wild animal until it has been subjected to the control of man. But bees have a local habitation usually in a tree and consequently are, in a sense, under the control of the owner of the tree. The right to cut the tree rests solely in the owner of the soil, and therefore such property as wild bees may be the subject of rests in him. Though bee-hunters may claim a right to the tree on the part of the first finder, the law does not recognize any such right, and one who enters without permission to cut it will be a trespasser. (20 Johns, 75.)

The owner of bees should not hive them so near the highway as that they will be likely to sting horses or other animals passing. If there they become irritable, and the owner knows it, and they do damage to a passer by, the owner will probably be liable. (8 Barb., 630; 24 Mo., 199.)

14. Law as to Hogs. The general principles applicable to domestic animals apply also to hogs. If known to be diseased when sold, the seller is obliged to make known the fact to the purchaser, and if he does not do so he will be liable for all the damages caused. (14 Allen, 20.) But where hogs and other domestic animals are sold without an express warranty the buyer takes them as they are. If he has an opportunity to examine them he will be held to take his chances on losses which may result from their being unsound, provided there is no fraudulent concealment of facts which render them worthless or dangerous. The rules governing the matter of trespasses by hogs are touched upon in the chapter on Trespasses. At the old common law a hog found trespassing might be killed *damage feasant*, but this has passed away with other ancient and harsh laws and has been replaced by statutory methods of obtaining summary relief in the several States.

CHAPTER XXVIII.

PASTURING ANIMALS.

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| 1. General Rule Applicable to the Case. | 5. Statutory Lien. |
| 2. The Agistor is not an Insurer. | 6. Trespasses by Animals Pastured. |
| 3. Duty of the Agistor. | 7. Agistor can not use Animals Pastured. |
| 4. Has no Lien at Common Law. | |

The custom of taking horses and other domestic animals to pasture is so common in many parts of the country that the liability of the farmer engaged in this should be understood.

1. General Rule Applicable to the Case. One who takes animals to pasture for a certain price is what is called in law a bailee for hire or custody, and he falls within the general rule applicable to bailments. His contract with the owner of animals is that he will give them that care and attention which their value, liability to injury, etc., require. He is bound to use ordinary diligence, and he must make good all losses which result from both gross and ordinary negligence. One who takes animals to pasture is called an agistor of them, and the term having this definite significance will be made use of here.

2. The Agistor is not an Insurer. While the agistor must bestow upon the animals entrusted to him a degree of care commensurate with their value and their likelihood to be injured, and while he is liable for the injuries which result from a failure to use such care, he is not an insurer of them. If they stray away from his premises, or are stolen, or injured through no fault of his, the loss must fall upon their owners.

3. The Duty of the Agistor. As to what will amount to the care required of one who takes animals to pasture, the rule is

that it must be such care as a prudent person would give to his own animals of a similar character and under similar circumstances. The rule goes further than the maxim laid down by the moralists, that "he who undertakes another's business, makes it his own"—that is, agrees to bestow the same care and attention upon it that he does upon his own, for he may be a careless and improvident person and habitually give to his own affairs a less amount of skill and care than is required. He must exercise the care of a prudent man, and he must possess such skill and knowledge of the business as will enable him to do so. He need not necessarily be a veterinary surgeon, but he should understand the habits and needs of the animal, and possess and exercise the ordinary common sense of a good farmer. Among the instances of negligence for which a liability would arise, are over stocking of land so that proper pasturage for all the animals is not provided, failure to provide water in constant and sufficient quantities, allowing the fences to become insecure or to remain out of proper repair, negligently leaving the gates open so that the animals stray and are lost.

4. The Agistor has no Lien at Common Law. At common law there is no lien given to the one who pastures animals. The agistor has no right to keep the beasts until his claim for pasturage is paid unless there is some local statute authorizing it. Where a person is obliged, by law, to do certain things, upon or about the property of others, he has a lien upon such property, that is a right to keep it until his legitimate charges are paid. Thus common carriers, inn-keepers, farriers, and the like, had a lien because they were bound in their respective lines to serve the public, but an agistor is not required to take in the animals of any or every one that comes along; he can pasture only such animals as he pleases. Nor can he claim a lien on the ground that his skill and labor have added to the value of the property; he has therefore no lien for the animals' pasture, but must look solely to their owners for his pay.

5. Statutory Liens. But the statutes of some of the States have given a lien to agistors. The statutes of Michigan provide that "whenever any person shall deliver to * * * * any person any horse, mule, neat cattle, sheep, or swine to be kept or cared for, such other person shall have a lien thereon for the just value of the labor and skill applied thereto by him, and for any materi-

als which he may have furnished for the keeping and care of such animals, and may retain possession of the same until such charges are paid." The additional expenses occasioned by the keeping of the animals after the lien has accrued constitutes an additional lien under the Michigan statute. (Howell's Statutes §§ 8399 and 8407.) The statutes of other States will be found to contain somewhat similar enactments.

6. Trespasses by Animals Pastured. When animals which are out at pasture escape from their inclosures through the negligence of the agistor and trespass upon adjoining lands and there cause injury, the injured party could at common law recover damages for such injury from either the owners of such animals or from the agistor. The statutes of many of the States, and the rulings of American courts, have established the rule that the action lies only against the agistor, or that when the owner of the animals is proceeded against he is entitled to recover from the agistor the amount which he has been obliged to pay if the trespass can be traced to any neglect on the latter's part to use the care required of him.

7. Agistor Can Not Use Animals Pastured. Of course in the absence of an agreement, the one who takes animals to pasture has no right to put them to work; though if a horse required a certain amount of exercise it would be proper to give it to him. This would not extend to using him for plowing or other farming purposes, and if so used and injured thereby the farmer might be liable for his full value. (46 N. Y., 490.)

CHAPTER XXIX.

HIRING OF ANIMALS.

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| 1. Rights and Duties of the Owner. | 4. Rights and Duties of the Hirer. |
| 2. The Owner Warrants Title. | 5. Borrowing Animals. |
| 3. Abuse of Hired Animals. | |

It is not uncommon in all communities to let out animals for hire. This is the principal business of livery stable men and is not an unusual transaction among farmers. It will be well therefore to learn something of the law respecting such transactions.

1. Rights and Duties of the Owner. In the hiring of animals it is the duty of the lessor, to him who is to have the use of the animals, to deliver them at the time agreed upon, in proper condition for the contemplated use, with suitable appendages, such as harness, etc., for the service intended, and to refrain during the time that the hirer is to have the animals, from doing any act which will interfere with the use and employment of them. If the animal is not in a proper condition for the use required of him the hirer is not bound to take it, and if after being taken the owner sells it or allows it to be attached or in any way taken from the hirer, it is a violation of the contract and the owner is responsible for the damage. The owner must see that he loans only an animal fit for the service required. If he loans a vicious or runaway horse and injury results without fault of the hirer the owner must not only stand the loss but pay for all the damage done.

2. Owner Warrants Title. It follows that the owner warrants the title and the right of continued possession to the hirer, but he warrants only against the rightful and legal claims of third persons and not against the acts of any wrong doer who may disturb the hirer's possession.

3. Abuse of Hired Animals. But should the hirer greatly abuse the animal hired, or otherwise violate the terms of the hiring, it may give the owner the right to terminate the contract and to reclaim the animal at once. The owner will of course have an action for the injury resulting from any cruel treatment or negligent use of the animal by the hirer, but there are authorities holding that any improper use or abuse of the animal will of itself terminate the contract of letting and give the owner the right to retake the animal, if he can do so peaceably. It will at any rate give him the right to maintain an action for its recovery. (12 Pick., 135; 3 id., 492.)

A Minnesota case holds that where a horse was overdriven that the owner was not only authorized to go and retake it, but that he could recover all his expenses in going to the place where the horse was and of bringing it home. (13 Minn., 335.)

4. Rights and Duties of the Hirer. It is the duty of one who hires animals to use them as a prudent man would use his own under the circumstances. He must provide them with suitable and sufficient food, shelter, and care during the time he has them unless there is an express understanding otherwise. If he does this his obligations will be discharged, he will not be responsible for damages resulting from accidents, or injuries, or illness of the animals, or any other cause. The expenses involved in the ordinary keep and care of the animals must be met by the hirer. But extraordinary expenses which are incurred by any inevitable accident or sickness of the animals must be paid by the owner. If, for instance, a livery horse should fall sick without fault of the hirer, the expenses of caring for him would fall upon the owner, and if paid by the hirer may be recovered back. So, too, if the animal is stolen the rule is the same, if there is no negligence or lack of the care of a prudent man, the loss falls upon the owner. The hirer does not insure the safe return of the animal, but only agrees to take that care of it which a prudent man would of his own.

It is the duty of the hirer to return the animal at the time agreed upon, or failing in this to show that it is lost or delayed by some means which the care of the prudent man could not have prevented.

5. Borrowing Animals. There is a distinction between "hiring" and "borrowing" animals. The borrower is held to a

higher degree of care and responsibility. If the loan is made *gratis*, the borrower, while he does not become an insurer, must see to it that the animals are treated with the highest degree of care. He must not put them to any other use than that agreed to by the lender (5 Mass., 103), nor should he allow third persons to have the custody or control of them.

The lender, however, must not be too careless in lending his property. If he should loan a spirited animal to a boy, or to a person whom he knows to be incapable of handling it, he must do it at his own risk.

CHAPTER XXX.

LANDLORD AND TENANT.

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| 1. The Importance of the Subject. | 9. What Alterations Tenant May Make. |
| 2. Leases of Land. | 10. Collecting Rent. |
| 3. The Duties of the Landlord. | 11. Landlord's Title Can Not be Dis- |
| 4. Landlord Must Pay the Taxes. | puted by the Tenant. |
| 5. The Rule as to Repairs. | 12. Tenant Must Guard the Property. |
| 6. Repairs of Farm Property. | 13. What the Tenant May Remove. |
| 7. Repairs of Fences. | 14. The Termination of a Tenancy. |
| 8. The Tenant's Duties. | 15. Rule in Michigan. |

1. The Importance of the Subject. There is hardly a business relation more frequent, and hence more important, in the modern community than that of landlord and tenant. This relation is created by a contract, either express or implied, between the parties. It is implied whenever one man owns the land and another is in possession of it by permission. The law, in such case, presumes that the one is the tenant of the other, whether there is any agreement to that effect or not. The relationship is said to be express whenever there is a contract regarding the matter between the parties.

2. Leases of Land. This contract is called a lease; it is a sort of a conveyance either for a certain number of years, for life, or at the will of one of the parties. The lease is usually made on condition that certain money, called rent, shall be paid by the person taking the lease, though payment of rent is not an essential part of the contract. Leases may be written or they may be verbal, that is by mere word of mouth. Verbal leases, however, are valid only where premises are leased for a short time. The statute of frauds of most of the States provides that "no estate or interest

in lands, other than leases not exceeding a term of one year, shall be created, granted, assigned, or surrendered, unless by act or operation of law, or by a deed of conveyance in writing subscribed by the party granting, etc." A verbal lease, then, for more than one year is void, and as the lease is void so an agreement to make such a lease is void, unless the agreement is in writing, consequently it will not be safe for one to depend on a verbal promise to lease for more than a year, as he will be without remedy if after having gone to expense and trouble, the person who promised him the lease declines to make it. Leases from mouth to mouth and for one year may be made verbally and, though nothing is said except that the tenant shall occupy and shall pay a certain rent, all the mutual obligations and rights belonging to the relationship of landlord and tenant at once arise. Where the lease is for more than a year one of the appended blanks (see index of forms) may be followed, and when a promise to rent for more than a year is made it should be done in writing, by the form given further on. The questions most commonly arising between landlord and tenant, are those as to the duties of the landlord and the mutual rights between the parties. It will be well here to determine what the landlord must do in connection with the premises, and what things must be done by the tenant.

3. The Duties of the Landlord. It is the duty of the landlord to see that his tenant has the quiet enjoyment and possession of the premises. By the mere act of leasing them he has assumed to own them, and his right to collect rent depends on the undisturbed possession of the premises by the tenant. If the tenant is put off by any person having a valid claim on the premises, that of course terminates the relation. (56 Ill., 417.) Of course a mere disturbance of the tenant by a trespasser, or the act of any stranger to the title, will not relieve the tenant from payment of rent; it must be a disturbance by one who has a superior title to the landlord. If the landlord willfully enter upon the land and expell the tenant from even a small portion of the premises, it has been held to relieve the tenant from all further payment of rent, though he continue in possession of the residue.

4. Landlord Must Pay the Taxes. As the landlord agrees that the tenant shall have quiet enjoyment of the premises it becomes his duty to pay the taxes and lawful assessments in order

that the tenant's possession may not be disturbed; and if the tenant is obliged to pay out money for this purpose to protect his quiet possession he may deduct it from the rent due. It is not unusual for the tenant to agree in the lease that he will pay the taxes; in which case, as in any other, where the tenant agrees to assume part of the landlord's duties, he must do so. The duties here referred to are those which the law imposes in the absence of an agreement by the parties. A tenant for life, however, is bound to pay the taxes.

5. The Rule as to Repairs. As to repairs, the rule is that unless the landlord binds himself by an agreement to make them, the burden of repairing will fall upon the tenant, and if the premises get out of repair, or even burn down, the rent may be collected by the landlord. Even if they were insured in favor of the landlord the tenant can not compel him to use the insurance money for rebuilding. The statute of some of the States, including New York, have changed this rule, and have provided that the landlord must keep the premises in repair, but there is no such provision in Michigan. As in other cases the parties may make such agreements in their leases respecting repairs as they may see fit. And if the landlord assumes the duty, and fails to perform it, it is said that the tenant may deduct from his rent as much as he has been compelled to pay out for such repairs as the landlord agreed to make. In order, however, to do this he must have given due notice to the landlord of the necessity for the repairs. Where the tenant specially covenants to repair, he is obliged to do so, even to the extent of rebuilding the buildings should they burn down, and he is in any event required to repair such defects as are occasioned by his own negligence, and to return the premises at the expiration of the lease in as good a condition as he received them, ordinary wear and tear excepted. In making a lease, the parties should come to a definite understanding regarding this matter of repairs, and should have the agreement concerning it fully written out in the lease.

6. Repairs of Farm Property. In the case of agricultural leases the tenant's duty to repair extends only to the dwelling house. In the absence of any agreement, or any local statute upon the subject, the tenant must keep the house in repair, but is not obliged to repair the barns, stables, other buildings, nor fences. Of course he must use the farm in a husband-like manner, and

must repair the damage resulting from his not doing so, but that is all. The importance of this subject of repairs rests largely in the fact that if an innocent person is injured by reason of the failure to repair the premises, a liability for such injury rests upon the person whose duty it was to repair. If, for example, a tenant fails to repair a warehouse, or store, or other building he had rented, and they should fall down, or a chimney should topple over, and a passer-by should be injured, the tenant might be liable for the injury unless the landlord had agreed to repair.

7. Repair of Fences. As stated, the obligation to repair the out-buildings and fences of a farm rests with the landlord; but with respect to division fences the statutes of Michigan and other States provide that the respective *occupants* of adjoining lands shall maintain the division fence between them in equal shares so long as both parties continue to improve the land. If the occupant happens to be a tenant this obligation will fall upon him. As an occupant he will have to build his share of the fence, but he will have a claim upon his landlord for the expense thereof if there is no agreement in the lease that he shall maintain the fences.

8. The Tenant's Duties. The tenant of farm property usually agrees in his lease as to the manner in which he shall use the farm, the course of cropping, the amount of manure, the number and kind of stock to be fed there, etc. All this is generally provided for in the lease itself, but if nothing has been said concerning this the tenant impliedly promises upon taking the farm to use it in a husbandlike manner. As to what is a "husbandlike" use of land depends upon the custom of the community, character of the land, etc. It is such a use of land as a good, prudent farmer would put his own land to. In Dakota a husbandlike use of land might permit its being sown to wheat continuously for a series of years, in New York three, or even two, continuous crops might be considered as wasteful of the land's fertilities. The tenant must not commit waste, as was fully explained in the chapter upon that subject, see page 138. He must pay the rent provided for in his lease, promptly and strictly in accordance with his agreement. No accident to the property or misfortune to himself will relieve him from this obligation. Though the land should be rendered useless by unavoidable accident of fire, or flood, or tempest, or the invasion of the public enemy, he will still be liable upon his promise to pay the rent. Every tenant should therefore

provide in his lease for a suspension of the rent during the time the premises are untenable by reason of any of these causes. The only thing which will relieve the tenant from this duty is his being evicted or put out by some one having a superior title, or having his quiet enjoyment of the premises molested through the fault of the landlord. An agreement is sometimes inserted in the lease that the tenant shall insure the premises. Without such an agreement he is under no obligation to procure insurance, though it might be prudent for him to do so for his own protection. The tenant often agrees in the lease not to assign or sub-let the premises without permission of the landlord. In the absence of such an agreement he may do so, but he will still be liable for the payment of the rent if the sub-tenant does not pay it. It is the tenant's duty also to put the premises only to the uses contemplated by the letting. It is customary to insert special agreements as to this. In the absence of any such agreements the tenant may put the premises to any use in keeping with the general object of the letting, but if he should put them to any other use, or to any illegal or immoral use, it will have the effect of terminating his lease.

9. What Alterations the Tenant May Make. The tenant has no right to make any unwarranted alterations in the premises, or to change or to add to them in any manner which will injure the landlord, but he may put such new structures, or improvements, on the property as his business may demand, provided he does nothing to injure or impair the value of the premises. A farm tenant may make such slight changes in the way of fencing, or putting up barns or sheds, as his needs may require, but he could not pull down a building because he had no use for it, or because it was in his way, or meddle in any other manner with the existing state of things so as to permanently change the nature of the property, or make it impossible for him to restore the premises to their original condition at the expiration of the lease.

10. Collecting Rent. The old method of collecting rent where it was not paid when due was by *distress*. By this procedure a landlord seized the tenant's chattels, or goods of any kind, and held them for a specified time; if the rent remained unpaid he then sold them and applied the proceeds in payment of the debt. This method has been abolished by statutes in Michigan and in most of the States, though it still, in effect, exists in some of

the New England and eastern States. The modern tendency is to place a rent debt on the same footing as other debts, and to provide only those methods for collection that are applicable to all debts. In Michigan the statute provides that if the tenant neglects or refuses, for seven days, after demand for possession of the premises, made in writing, to deliver up the possession of the premises or to pay the rent due, the landlord may recover the possession of the premises and judgment for the rent due in an action before a circuit court commissioner.

11. Landlord's Title Can Not be Disputed by the Tenant. When a person rents property from another he recognizes such other as his landlord and he is precluded from disputing the title. This rule is rigidly enforced and it extends to a tenant who holds over after his time has expired, as well as to all under tenants, assignees, and all other persons claiming under the lease.

12. Tenant Must Guard the Property. A tenant of farming lands is bound to protect the property from injury the same as though it were his own. While he is not an insurer against casualties, he still agrees to exercise that care over the property which a prudent man would over his own. The landlord having no control over the premises himself may look to his tenant to make good all injuries to the premises, whether those injuries were caused by the negligence of the tenant or by a stranger. In fact the only injuries to the premises which the tenant is not liable for are those which result from the act of God, like storms or floods, by the acts of the public enemies, or of ordinary wear and tear.

13. What the Tenant May Remove. When the tenancy has expired and the tenant is about to move away, he may take with him certain fixtures which he could not remove if he were the owner and had recently sold the land. In the chapter on fixtures it was explained that anything so fastened to the soil as to become a fixture was regarded in law as a part of the soil, and could not be removed by the seller on a sale of the premises. It was there also explained that, as between landlord and tenant those fixtures which were put in by the tenant for the purpose of enabling him to carry on a trade might be removed. The privilege, however, has not been extended to the tenants of farm lands to remove those fixtures which have been erected for agricultural purposes. It is difficult to perceive why farm tenants should not be upon the same footing with trade tenants, but the distinction

has existed, though the tendency of late years has been to ignore it. (Taylor's L. & T., § 548.)

14. The Termination of a Tenancy. When a lease has expired, the lessee, if he does not remove from the premises, becomes a tenant at will, and his right to possession can not be cut off except by "notice to quit." If he has been a tenant from year to year the law will imply, in the absence of an express agreement, that the parties have renewed the previous agreement for at least another year. In this and in all cases where the tenancy is for an indefinite time, a "notice to quit" is necessary. This notice, the length of time that it must be given, the manner of giving it, etc., is provided for by the statutes of the several States.

15. Rule in Michigan. In Michigan whenever an occupant, after his right has ended, continues to hold by consent of the owner, he is a tenant at will. All the tenancies at will may be terminated by a three months' notice, and the same for tenancies at sufferance. The notice to quit may be served upon the lessee or upon any person holding under him. The notice should simply state that the premises are demanded and that the tenant must remove. A tenant wrongfully holding over for a short time is not thereby entitled to a three months' notice to quit. It is only when the occupant holding over has some equities or rights which would render it unjust to require him to remove immediately, that the law gives a right to a three months' notice. (40 Mich., 285.)

CHAPTER XXXI.

RAISING CROPS ON SHARES.

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| 1. Farming on Shares is Not Leasing. | 3. The Duties of the Cropper. |
| 2. The Cropper on Shares is Not a Laborer for Hire. | 4. How the Crops Shall be Divided. |

It is not uncommon in many parts of the country to farm land on shares; the owner of the land receiving a portion of the crop and the farmer the balance. When the relations of these parties are not such as to make them landlord and tenant there are certain mutual rights and duties which require notice here.

1. Farming on Shares is not Leasing. When a person lets out his land on shares for the purpose of having a crop raised it does not amount to a leasing of the land. The owner still retains possession, subject to the right of the other party to enter for the purpose of carrying out his contract.

So soon as the crop is raised and harvested, the right of the cropper to enter ceases. When the crop upon one portion of the land is harvested the right of the cropper to enter upon that portion ceases, though he still has the right to enter upon the other portion. (47 Ill., 344.) The relation of landlord and tenant does not arise unless the person growing the crop is given the exclusive possession of the land and pays for it by a portion of the crop. The distinction is a rather fine one, yet it is important. The intention of the parties will govern the matter, if the owner simply intends to allow another person to raise a crop upon his land, and does not contemplate giving up the full possession and control of the land, there will be no tenancy created.

• The parties to a contract for raising crops on shares are tenants

in common of the crop while it is growing. Either party may at any time sell his interest in the crop as he might sell any other chattel, and it may be seized on legal process unless growing crops are exempt from seizure.

2. The Cropper on Shares is not a Laborer for Hire. Nor is one who farms on shares a laborer who receives for his hire a portion of the crop and the amount of his wages depending on his own industry. The law regards him as a contractor having full control of his own labor, and not being in any way under the orders of a master. (19 Ga., 531.) If he does not attend to his work he may be liable for breach of his contract, but not as a servant who neglects his duty.

3. The Duties of the Crop-Grower. When a crop is grown on shares the owner of the land and the cropper, being tenants in common of the crop, are each entitled to go upon the land, but the technical possession of the crop, so far as its care, culture, and protection are concerned, is in the cropper. (17 Cal., 542.) The cropper must farm in a good, workmanlike manner, and if nothing is said upon this point in the contract he must pursue the methods customary in the vicinity. (33 Iowa, 24.)

4. How the Crop Shall be Divided. The contract should specify definitely the respective shares that each shall have in the crop when it is divided, the method of dividing it, the time and place of delivery, etc., but if the contract is silent upon all these points, the land being simply "let upon shares," the parties will be held to have contracted with reference to the custom of the neighborhood in this regard, and they will be bound by that custom in these particulars. (40 Ga., 511.)

CHAPTER XXXII.

ARBITRATION AND AWARD.

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| 1. How to Proceed by Arbitration. | 4. The Award. |
| 2. Arbitration Bond. | 5. Statutory Arbitration. |
| 3. Duties of Arbitrators. | 6. The Method in Michigan. |

The law favors any method by which persons may settle their own disputes. If persons can not agree between themselves as to the settlement of any difference between them, it is lawful, proper, and commendable to refer it to arbitrators, and if properly so referred the parties will be bound as firmly by the decision of such arbitrators as by the result of a suit at law. Settling a matter in dispute in this manner is called an arbitration, the finding or the determination of the arbitrators is called the award.

1. How to Proceed by Arbitration. Having agreed to refer matters to arbitrators, the first step will be to reduce such agreement to writing; this is called an agreement of submission. It should state the names of the arbitrators selected by each party, and how they are to settle points upon which they are unable to agree. This may be done by empowering them to call in another person, chosen by themselves, or to choose an umpire to act in their stead when they fail to agree. It should distinctly and definitely set forth the particular controversies desired to be settled, and how and by whom the expenses of the arbitration are to be met. If this latter point is not set forth the arbitrators are entitled to look to the prevailing party to pay them the same fees that are allowed to referees in courts of record. An agreement to arbitrate may be revoked by either party at any time before an award is made. Death of either party previous to the award works a revocation.

2. Arbitration Bond. The agreement of submission should be supplemented by an arbitration bond, executed by each party, and delivered to the other after the manner set forth in the form. (See Part III.) If no bonds are given the arbitration is still binding, though if the failing party is irresponsible there might be difficulty in enforcing the award.

3. Duties of Arbitrators. The arbitrators must strictly confine themselves within the powers conferred by the submission. Only the precise controversy submitted to them should be determined. If the award goes farther it will be void, unless the portion which exceeds the submission can be separated without affecting the merits of the rest, in which case that portion only will be void. The arbitrators must appoint a time and place for the hearing, must take the proper oath before the proper officer before proceeding to take testimony, and must proceed in all matters in accordance with the local statute upon the subject. All the arbitrators must meet and hear the allegations and proofs of the parties. They may compel the attendance of witnesses, usually by summons from a justice of the peace.

4. The Award. The award or finding of the arbitrators should state clearly and distinctly the determination arrived at. It should settle all the matters submitted to the arbitrators, and be complete and final so as to terminate the controversy. It should be signed and sealed in duplicate and delivered to each party.

5. Statutory Arbitration. The statutes of most of the States have regulated this matter of arbitration and award, and have provided that the award may be brought into court and judgment entered thereon. It will be best to follow the statutory method where one is provided, though if it is not followed the proceeding would still be valid and binding in most States, though no judgment can be entered on the award.

6. Method in Michigan. In Michigan all disputes, excepting those affecting the title to real estate, may be referred to and settled by arbitrators. And a claim to an interest in lands for a term of years, or for a year or less, as well as controversies respecting the partition of land between tenants in common, or concerning the boundaries of lands, may also be submitted to arbitration.

The agreement to arbitrate must be acknowledged the same as a deed. The arbitrators must appoint a definite time, as well as a

place of hearing. The arbitrators must be sworn to faithfully hear and examine the matter in controversy. They have power to administer oaths to witnesses. The witnesses may be compelled to appear by subpoena issued by any justice of the peace. An award made by a majority of the arbitrators is valid, unless the submission required the concurrence of all of them. If the award is not paid or complied with it may be filed with the clerk of the court, designated in the submission, any time within a year after the making of it. Such award may be affirmed by an order in open court, unless it be vacated or modified. It may be vacated upon the ground

1. That it was procured by fraud or corruption.
2. That there was evident partiality shown by the arbitrators.
3. That the arbitrators were guilty of misconduct in refusing to postpone the hearing on sufficient cause shown, or refusing to hear material evidence, or in any other way prejudicing the rights of a party.
4. That the arbitrators exceeded their powers, or imperfectly executed them, or made an award that was not mutual, final, and definite.

The award may be modified by the court

1. When there is a miscalculation of figures, or mistake in the description of a person or property.
2. When the arbitrators have awarded upon a matter not submitted to them.
3. When the award is imperfect in matter of form not affecting the merits.

When an award is affirmed or modified the court renders judgment in favor of the party to whom the award was given. If the award was a sum of money, or damages, the judgment is that he recover the same. If it ordered any act to be done, the judgment is that the act be done according to the order.

Neither party has power to revoke a submission made under the statute without the consent of the other, and if either party fails to appear before the arbitrators after notice, they may determine the matter upon the evidence produced by the other party. See Howell's Statutes, §§ 8474-8496.

CHAPTER XXXIII.

THE DESCENT OF REAL PROPERTY.

In the preceding chapters the rights and duties of the average citizen have been considered specially with reference to the acquirement and use of land. It will now be interesting to examine as to how land may be disposed of, and particularly to see just what will become of a man's property when he dies.

With respect to the sale of land, what was said early in the book in Chapter III in regard to the purchase of it will be equally applicable, but the descent, or inheritance, of real property remains to be more fully considered.

1. The Common Law as to Descent. By the English common law all of the landed property of a person goes, upon his death, to his oldest male child. This is called the law of primogeniture, and is in force in England at the present time. Not being conformable with the genius of the American people, this law has not been recognized in this country. In a spirit of equality our law seeks to divide property equally among the children or other heirs, where there has been no disposition made of it by will.

2. Statutes of Descent. The common law, as above set forth, not being applicable to this country, it has been necessary in each of the States to enact statutes providing for the descent or inheritance of real property. While these statutes are not identical in all their provisions, there is a general similarity in their main features. The following general statement will be found of interest to the casual reader, while those who are specially and personally interested must, for details, examine the statutes of their respective States.

The rules or canons of descent of real property, as they are in force in the various States, may be set forth substantially as follows:

First. If a person dies intestate, that is, without a will, and is possessed of real property, it will go to his children and to the issue of any deceased child, by right of representation, in equal shares. To illustrate: A man dies intestate leaving two children living and three grandchildren, the issue of a third child who is dead. His real property will be divided into three equal shares, each of the two children will take one share, and each of the grandchildren will take a third of the remaining share.

Second. When the intestate leaves no living children, if there is issue of deceased children, his real property will go to such issue in proportion to their right of representation. That is to say, such issue will take in equal shares whatever portion their parents would have received if living. To illustrate: A man dies intestate leaving one grandchild, the issue of one deceased son, and seven great-grandchildren, the descendents of his only other child, deceased. His real property will go half to the grandchild and half to the seven great-grandchildren by right of representation.

Third. If the intestate leaves no issue, then the real property goes to his father.

Fourth. If the intestate leaves no issue, and no father, his real property goes to his mother, his brothers and sisters and to the issue of any deceased brothers and sisters. This, however, is not the rule in many of the States, for the husband or wife of the deceased at this juncture is sometimes given a share.

Fifth. If the intestate leaves no issue, nor father, nor brother, nor sister, his real property goes all to the mother, or in some States to the mother and widow.

Sixth. If the intestate leaves no issue, nor father, nor brother, nor sister, nor widow, his real property will go to the next of kin whoever they may be. *

Seventh. If the intestate leaves a widow and no kindred, his real property goes all to the widow, or if the intestate is a married woman and leaves no kindred, her estate goes to the husband.

Eighth. If the intestate be a woman, her real property will

* To ascertain who is the next of kin is oftentimes a very difficult matter. In Cooley's Blackstone's Commentaries, book two, page 203, may be found a table of consanguinity with rules for determining title by descent.

descend as above indicated, except in those States which still recognize an "estate by the curtesy," the husband, if a child has been born, takes the rents and profits of the whole, or a portion of the property during his life. *

Ninth. If the intestate leaves no widow, or husband, and no kindred, then the real property goes to the State.

It must be remembered that the foregoing is only an outline of the general provisions respecting the descent of real property in America. It does not attempt to state the law accurately with respect to any single State.

3. The Widow's Right of Dower. The rules of descent of real property are all subject to the widow's right of dower, which is the right to the use of one-third of her deceased husband's real property during the remainder of her life. Under the statutes of all the States she has this right, nor can she be deprived of it except by her own free act. It can not be taken from her by her husband even though he give her other land instead. If he wills her property in lieu of dower, she need not so accept it unless she chooses to do so. If he wills her property and does not specify that it is in lieu of dower, she will take that property and her dower interest beside. But the dower interest is only a life estate, and upon the death of the widow the property goes to the heirs the same as if there had been no widow.

Dower does not extend to all the interests in land of which a man may die possessed. It does not attach to an estate held in joint tenancy, for that goes to the survivor, nor does it attach to partnership lands purchased by partnership funds for partnership purposes. (4 Metc., 537.) A mortgage given for the purchase money of lands, though not joined in by the widow, takes precedence of her dower rights (15 Johns., 458), and in some of the States dower will be defeated by a sale of lands on execution for the husband's debts (8 Penn. St., 120; 22 Wend., 498,) and it is generally cut off by a sale of lands for non-payment of taxes. (8 Ohio St., 430.) Likewise, an exercise of the right of eminent domain during the life of the husband will cut off the right of dower though no compensation be made therefor. And the same is true where lands are dedicated by the husband for any public use. (3 Ohio St., 24; 9 N. Y., 110.) Upon the death of the hus-

* The "married woman's acts," however, have had the effect of abolishing the "estate by curtesy" in many of the States, as was shown on page 16.

band the dower lands are set apart to the widow by commissioners acting under the authority of the probate or surrogate courts.

4. Homestead Laws. These are provisions designed to secure to the widow and minor children of a deceased person the undisturbed possession of the homestead during a certain period. They usually provide that the home and an amount of land shall be exempt from execution, and their effect is, in many cases, to set aside, or to hold in abeyance for a time, the laws of descent of property above laid down.

5. Illegitimate Children. A person born out of wedlock will inherit from his mother under the foregoing rules of descent, but he is given no share in his putative father's estate. If an illegitimate child die without lawful issue his estate goes to his mother, or if she be dead, it goes to his relatives on his mother's side; but neither the putative father nor the paternal relatives are given any share in the estate.

When, after the birth of an illegitimate child, his parents intermarry, such marriage has the effect of making the child legitimate. And in some States there is a provision that if the father of an illegitimate child shall, by writing, in due form acknowledge such child to be his own, such child shall be considered legitimate and shall inherit from the father under the rules of descent the same as though he were born in lawful wedlock.

Posthumous children are considered as living at the death of their parents, and inherit property accordingly.

6. Advancements. When property has been given to any child or other descendent by the intestate during his lifetime, and the intention was to make such gift an advancement in whole or in part of the share such child or descendent would otherwise receive, then such gift must be deducted, on the death of the intestate, from the share of such child or descendent.

It must be made clearly manifest, however, that the gift was intended as an advancement or this rule will not apply. If the amount of the advancement exceeds the share that the heir would otherwise have received, he is not required to refund any portion of it, he simply is excluded from any further share. If the advancement is less than his share, he is entitled to as much more as will give him his full share of the estate of the deceased.

All gifts and grants are deemed to be advancements if they are

so expressed in the deeds making them, or if they are charged in writing by the intestate as advancements, or if they are acknowledged as such by the child or descendant receiving them.*

* The Michigan reader is referred to Chapter 219, of Howell's Compiled Statutes, commencing on page 1503.

CHAPTER XXXIV.

THE DISTRIBUTION OF PERSONAL PROPERTY.

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|-------------------------------|---------------------------------|
| 1. Administration of Estates. | 3. Distribution of Residue. |
| 2. Payment of Debts. | 4. Is Administration Necessary. |

In the preceding chapter we have seen how the real property of an intestate is disposed of among the heirs by the operation of the statutes of descent. It remains to consider what will become of the personal property of one dying without a will.

1. Administration of Estates. The law provides for the administration of the personal property of an intestate by proceedings in the probate court. A petition for administration is presented to the court, and upon the appointment of an administrator the title to all the personal property vests in him, and such property is by him disposed of as the law directs.

2. Payment of Debts. The administrator, out of the personal estate, must first pay the debts of the deceased. These take precedence over all other claims and must be first discharged. The residue is then distributed by the administrator to whoever is designated by the statutes as being entitled thereto.

3. Distribution of Residue. In general it may be said that the residue of the personal property of an intestate is distributed to about the same persons and in about the same proportions as is real property under the statutes of descent, as set forth in the preceding chapter. The statutes of distribution of the various States like the canons of descent, are similar, but not identical, in all their provisions.

A striking difference between the statutes of descent and the

statutes of distribution is that while under the former the widow takes, during her lifetime, the right merely to use one-third of the real property, under the latter she takes the full title to one-third of the personal property. If there be no issue the widow takes generally one-half, and in some of the States the whole of the personal property. But the detailed provisions of any particular State can only be learned by an examination of its statutes. (1.)

4. Is Administration Necessary. If a man dies leaving but a small estate and having no debts, and there is no question as to who is entitled to his property under the law, the question may arise whether it is necessary or important that his estate be administered upon by the probate court. The proceeding involves some trouble, expense, and delay, and it is often dispensed with under such circumstances. But it is safe to say that in almost all cases it is better that these proceedings be had.

The advantageous results of the probate proceedings are that the title to the property is fixed in the legitimate heirs beyond any peradventure, and that all claims which are not presented within a given time during the proceedings are forever barred and cut off, thus giving the heir a possession and ownership which can never be disputed. These steps having been taken there is no obstacle in the way of selling the property, for the most careful buyer need not doubt the title, and need have no fears that at any future time some creditor of the deceased may come forward and establish his right.

This security of title results from the fact that all persons,

(1.) The following is the provision of the Michigan statute relating to the distribution of personal property :

“ The residue, if any, of the personal estate shall be distributed as follows : One-third thereof to the widow of the deceased, and the remaining two-thirds to his children, or the issue of any deceased child or children, if any there be, except that if there be but one child, or the issue of such child, living, then to the widow one-half of such residue, and such child, or the issue thereof, the other half ; in case the deceased shall leave a widow and no children, or the issue of a deceased child him surviving, then such residue, if it shall not exceed the sum of one thousand dollars, shall go to such widow, and if it exceed the sum of one thousand dollars, such excess shall be distributed one-half to such widow, and the other half to the father of the deceased, if living ; if not, such other half shall be distributed equally to the mother, and the brother, and sisters, and the issue of any deceased brother or sister in equal proportions, share and share alike ; and if there shall be neither father, nor mother, nor brother, nor sister, nor issue of such brother or sister surviving, then such residue shall go to the widow ; in any other case the residue, if any, of the personal estate shall be distributed in the same proportions and to the same persons, and for the same purposes as prescribed for the descent and disposition of the real estate.” See Howell's Statutes, Sec. 5847.

whether heirs or creditors, are bound to take note of the proceedings in the probate court, and to establish their claims during those proceedings; or not at all.

It may be remarked before leaving this subject, that while the law of the place where the land lies governs the manner of its descent, the law of the place where the deceased lived governs the distribution of the personal property.

CHAPTER XXXV.

OF WILLS.

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|--------------------------------------------|----------------------------------|
| 1. Ways of Disposing of Property at Death. | 7. Avoiding a Will. |
| 2. Definition of a Will. | 8. Form and Requisites of Wills. |
| 3. Common Law as to Wills. | 9. Signing the Will. |
| 4. Statutes on the Subject. | 10. Witnessing the Will. |
| 5. Kinds of Wills. | 11. Form of Attestation. |
| 6. Who May Make a Will. | 12. Codicils. |
| | 13. Revocation of Wills. |

We have seen what disposition the law will make of a person's property if he dies without leaving a will. If he is not satisfied with that disposition, he has, if he is of sound mind and disposing memory, full power to change it in any way he sees fit.

1. Ways of Disposing of Property at Death. The owner of property can provide for its disposition at his death in three ways:

1. By deed, to take effect at his death.
2. By gift made in apprehension of immediate death. (But this applies only to personal property.)
3. By will.

The first two methods are not in very common use. The law applicable to them does not differ materially from that governing the general subject of deeds and gifts. A deed to take effect at death differs only from a common deed in that it does not take effect till death. A gift made in apprehension of death differs from an ordinary gift only in this particular, that the recovery of the donor from the threatened death revokes the gift. But the method by will is the safest and best way of disposing of property

at death; because a deed fetters one's property while he is still living as it in effect disposes of it at once, and where a gift is made, all is left to verbal proof and everything is involved in uncertainty. Where it is possible, therefore, a will should always be made, unless one wishes his property to take the course prescribed by law, and even then it is desirable in many cases.

2. Definition of a Will. A will is defined to be "the disposition of one's property to take effect after death." The disposition by deed above referred to takes effect at once, so that the grantor cannot revoke it, though the possession of the grantee is postponed till the grantor's death. The disposition by gift also takes effect at once, but is liable to be revoked by the grantor's recovery.

3. Common Law as to Wills. According to the principles of the common law, only personal property could be disposed of by will. The real estate went to the heir-at-law, no matter what the wishes of its owner might be.

4. Statutes on the Subject. The common law provision respecting wills being obviously not in harmony with the American spirit, has been supplanted by statutes in the several States, which provide in the main that a man may do practically whatever he wishes with his property, and which regulate with more or less detail the whole matter of making wills. To determine, therefore, the exact formalities for the execution of a will, one must look to the statutes of the State in which the will is to be enforced.

5. Kinds of Wills. Wills are either written, or unwritten. An unwritten will should never be used if it is possible to make a written one, for such an instrument is even more uncertain than a verbal gift of property, for its validity depends not upon any act of the testator, but merely upon what he said. At common law an unwritten will was as valid as a written one, and could be used for all purposes that written wills could. But the statutes of the American States limit this privilege to those cases where death is so imminent as to prevent the making of a written will.

6. Who May Make a Will. In general, a person in order to make a valid will must possess—

1st, full age; 2nd, freedom of action, and 3rd, a sound mind.

By full age is meant the age required by statute, which is usually twenty-one years.

By freedom of action is meant that the will must be the will of the testator, and not simply the registering or writing out by him of the will of some one else. If the will is the result either of physical or moral compulsion it cannot be allowed to stand. The mere fact, however, that suggestions were made and acted on, or that solicitations were yielded to, does not avoid the will. The testator has a perfect right to act on suggestions and to yield to solicitations. The question in all such cases is, did he act himself or was he the mere tool in the hands of another, in short, is it *his* will?

By "sound mind and disposing memory," is meant the possession of sufficient intelligence to act understandingly.

A less degree of intelligence is required to make a will than is required to make a valid contract. To make a binding contract the mind must be sufficiently strong to cope with another intellect. To make a valid will the mind need be only strong enough to understand the property to be given, and to know its own desires as to who shall have that property. In making a contract the weaker mind is the prey of the stronger; in making a will there is presumed to be no strong mind ready to take such advantage.

Among persons not possessed of sound minds may be mentioned idiots, drunkards, and insane persons. By idiots is meant persons entirely devoid of understanding. Persons may have weak minds and still be able to make wills. If they have some memory and a general knowledge of their property and a tolerably clear desire as to who shall have it, that is sufficient.

Drunkards need no definition. As to whether their wills shall stand depends upon whether, at the time they were made, the testators possessed sufficient power and understanding to control their actions. The wills themselves, both in the case of idiots and drunkards, might throw much light upon the question of their validity.

By insane persons is meant persons in such an abnormal condition of mind that the reason is either partially or wholly incapable of performing its functions. Insane persons are subject to delusions, either permanent or temporary, which may or may not affect their conduct. These delusions may extend to one or to all subjects. There is no rule by which one's sanity may be easily tested. One may be so clearly insane that everybody will know it. Another may be equally insane on some single subject and his

most intimate friends may never suspect it. Hence it sometimes happens that a community will be about equally divided on the question of the sanity of one of its principal members; each basing his views on what he has seen.

It is not evidence of insanity that a man is odd or queer, or that he holds views at variance with the prevailing ones. Insanity is more than an error in judgment. It is a whole or partial dethronement of the reason. And there is really no single test that can determine its presence. Those who call themselves experts upon the subject unfortunately have done much to bring their calling into contempt. The readiness and ability with which they testify for the party who employs them, and the hopeless contradictions of each other in which they invariably become involved, has cast suspicion on all expert testimony on this subject. The superior opportunities of friends and neighbors to form an accurate judgment has inclined the Courts to attach more weight to their testimony than to that of experts. The every day ordinary life of a man affords really the best means of determining his sanity.

7. Avoiding a Will. When it is sought to set aside a will, some cause legally sufficient to invalidate it must be alleged, and it must be shown that such cause operated in the making of the will. For instance, to avoid a will because of the insanity of its maker, it must not only appear that the testator was insane, but that his insanity affected the will. Now, the ordinary condition of insanity is a partial and not a complete dethronement of the reason. The evidence may show that the testator was insane only on one subject, or that he was insane only a part of the time. In the former case the will would be valid if the subject on which the testator was insane did not influence his will. In the latter it would be valid if made during a "lucid interval" or period of sanity. Here, as in the case of persons of weak minds, the will itself will be important as determining whether the insanity of the testator had any thing to do with its being made. But it is not in keeping with our purpose to go fully into this matter of avoiding wills.

8. Form and Requisites of Wills. It is a difficult thing to make an unobjectionable will. As a rule, good trustworthy legal assistance should always be secured before attempting it. But if one is called upon to make his own will, or the will of a neighbor, under circumstances which will not admit of delay, the following may be of service:

The will must 1st, be written; 2nd, it must be signed, and 3rd, it must be witnessed.

It may be written either with pencil or ink. Generally no particular form or arrangement of words is necessary. If the instrument clearly indicates the testator's desires it will be sufficient. It will be well for the testator to state at the beginning that it is his last will. The appended forms illustrate this.

In the body of the will the testator should express his wishes just as accurately and simply as possible, and he had better dispose of his property in as simple and plain a way as he can, and not attempt any complications, like the creating of trusts, etc., unless he has the services of a good lawyer in drawing his will.

There are certain words used in wills which have a peculiar legal significance. "Bequeath" applies only to personal property; "devise" applies only to real estate. If this expression is used, "I give, bequeath, and devise my estate and property as follows: that is to say," (and then state plainly what shall be done with each piece of property or sum of money) it will be safe and sufficient. Words of inheritance should be used in any devise of land, as was explained in the Chapter on Real Estate, page 13; that is to say the expression "and his heirs" should follow the name of every person to whom land is given, unless it is desired to give simply a life estate.

If the testator has children, and does not provide for them or make any mention of them in his will, the law presumes they were forgotten; and it generally, in such cases, gives them the same share they would have received if there were no will. If the children have been provided for by "advancements" during the lifetime of the testator, that fact should be stated in the will.

The testator should always name his executor, though the will is good without it, as the court will appoint an "administrator with the will annexed."

9. Signing the Will. By signing is meant the attestation of the instrument by the testator's name. If the name is put anywhere on the instrument, with the intent of signing, it will be a good signature, unless the statute requires the name to be signed in some particular place. If the testator is unable to write he may sign with a mark, or his hand may be guided by another. The following attestation clause is generally and very properly used: "In witness whereof I have hereunto signed and sealed this instru-

ment, and published and declared the same as my last will at on the day of, 1885." Then follows the signature. No seal is required.

10. Witnessing the Will. There are three reasons why a will should be witnessed. 1st, That the instrument may be identified. 2d, That there may be evidence on the instrument of its proper execution, and 3d, That there may be persons designated who can testify as to the testator's condition, and as to his compliance with requisite formalities.

The will should be witnessed in the testator's presence, and by presence is meant both physical and mental presence. That is it must be when the testator can see the act done, and the testator must have such a control of his faculties as to know what is going on. The witnesses should be persons who are competent to testify. They should not be persons who are to receive anything under the will. At common law a will so witnessed was void. Under our statutes such wills are valid, but the witnesses can not receive their legacies. They should be requested, either actually or impliedly, by the testator to sign as witnesses. They need not see the testator sign the will, nor need they read the will, but they should know, either by his statements or conduct, that he has signed it and that the instrument is his will. Care should be exercised in the selection of witnesses, for if any question arises as to the testator's sanity, or anything of the kind, their evidence is first to be taken and is very important. Two subscribing witnesses are usually required, and in some States three are required. It will be best in all cases to have three disinterested persons sign the will as witnesses.

11. Form of Attestation. Over the witnesses' names should be written their attestation, no particular form of words is required for this, but the following will be found a safe guide:

"On this ——— day of ————, 188—, the above named ———— signed and sealed this instrument, and published and declared the same to be his last will; and we, the undersigned, in his presence and at his request, and in the presence of each other, have hereunto subscribed our names as witnesses."

All the statutory requirements respecting the execution of wills should be carefully complied with. A failure in this regard may render the will void. (1.)

12. Codicils. A will may be changed whenever the testator

(1.) The Michigan reader should consult chapter 220 of Howell's Statutes.

desires. It may be done by adding what is called a "codicil," or it may be done by revoking the will. A codicil is really a little additional will, not revoking but only varying the former will in some way. It must be executed with the same formalities as the will itself. There can usually be but one will in force, and that is the last one; but there may be any number of codicils, and all valid. The changes made by a codicil in the will, or in former codicils, should be very clearly and distinctly stated, and it will be well always to state that the former will is expressly confirmed excepting so far as changed by the codicil. If the codicil gives a legacy to one who has already received one in the will itself, the codicil should state whether the second legacy is given instead of the first, or in addition to it. Codicils are sometimes added to wills for the purpose of stating that some legacy provided for in the will has been given during the lifetime of the testator as an advancement.

13. Revocation of Wills. Wills may be revoked in several ways, as follows: 1st. By an instrument executed for that express purpose. This instrument should be of the same nature as the will, and must be executed in the same manner. 2d. By making a subsequent will inconsistent with the former one. So far as the later will is inconsistent with the earlier one it revokes the earlier one. But the earlier one will stand so far as it is not inconsistent, unless there is a clause, as there usually is in the later one, expressly revoking the former one. It is well to make every will complete in itself so that it will provide for an entire distribution of the testator's property, and to insert in it a clause revoking all former wills. 3d. By a destruction of the will. This, in order to operate as a revocation of the will, must be intended to have that effect. Tearing off the name of the testator is said to be sufficient, but it is safest to completely destroy the will, as by burning it. If a mutilated will is found among the papers of the testator the presumption is that it was mutilated with the intent of destroying and revoking it. If such a will is found elsewhere the presumption is that it is still a good will. But the matter in both cases is to be determined by proof. 4th. By a change in the circumstances of the testator. If the will disposes of a specific piece of property and the testator before his death sells or makes some other disposition of that property, such fact revokes that part of the will. 5th. By operation of law. If, after making a will, the

testator marries and has a child, such fact revokes the will. The testator must make another will after the birth of his child if he wishes it to stand. Or if the testator wills away property which his widow may claim as dower, or if he leaves her nothing in lieu of dower, she may still claim her dower right, and that will in part at least revoke the will. So likewise if the testator makes no provision for his children, or makes no mention of some one child, such child may claim the share that he would have received had there been no will, and thus the will may be in part revoked.

The forms of wills given in the concluding portion of the book are of a simple nature and may be followed with safety in the majority of cases; but where it is desired to create trust estates, remainders, executory devises, etc., the aid of a competent lawyer should always be secured.

CHAPTER XXXVI.

EXECUTORS AND ADMINISTRATORS.

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|------------------------------|-----------------------------|
| 1. Duties of Executors. | 5. Payment of Debts. |
| 2. Duties of Administrators. | 6. Commissioners on Claims. |
| 3. Inventory of Assets. | 7. Distribution of Assets. |
| 4. Appraisers. | 8. The Probate Court. |

Many persons who are not lawyers are called upon to act either as executors of wills or as administrators of the estates of deceased persons; and in closing this portion of this book it seems well to give some direction to those who are thus entrusted by their friends with the settling of estates.

1. Duties of Executor. An executor is a person named in the will of a deceased person as the one who is to execute the will and settle his or her estate. There may be more than one executor, and any one who is competent to make a will is legally qualified to be an executor. If the will does not name an executor, or the one named will not act, or he dies or resigns, the Court appoints one who is then called the "administrator with the will annexed." Usually the husband of a deceased wife or the wife of a deceased husband, and after them the next of kin in the order of relationship, has the right to be so appointed; but the Court has discretion in the matter and will not make the appointment unless it seems best.

The executor is the personal representative of the deceased, and in him is vested, immediately upon the death of the person making the will, the title to all the personal property of the deceased, for the purpose of discharging his liabilities, fulfilling his contracts, if they are of such a nature that they can be carried out, and of exe-

cuting the will in every particular so far as possible. He is liable only so far as the means or assets in his hands extend, and does not become personally liable except upon his written promise to that effect, duly signed by him.

As soon as the will is proved and allowed, the Court issues to the person who is named in it as executor "letters testamentary," if he is competent and can give the required bond. A bond is required usually in all cases, even if the testator specially directs in his will that no bond be given, though in this case the penalty of the bond is made merely nominal, otherwise it is put at about twice the amount of the property involved. The bond is conditional on the faithful discharge of the duties of the office. These duties of the executor may, in a general way, be stated as follows:

First. To see that the deceased is buried in a suitable manner. Unreasonable expense must be avoided, and if the estate is insolvent, the amount to be so expended is sometimes limited by statute. (14 Serg. & R., 64.)

Second. To offer the will for probate within a reasonable time. In proving the will, filing his bond, giving notices, making and returning inventories, etc., the executor must conform to the laws of his State and the rules of the Court. The Clerk of the Court will generally give him full instructions upon all these points.

Third. To make and return to the Court within the required time a true and perfect inventory of all the goods, chattels, rights, credits, and estate of the deceased, which shall come to his possession or knowledge.

Fourth. To collect all the property of the estate of whatever nature, pay the just and legal debts in their proper order (see page 275), and dispose of the remainder as the will directs.

Fifth. To render a true account to the Court within the required time, and at any other time when so directed by the Court. Directions will be given at the Probate Office as to the manner and form of making the account.

If the executor dies before closing the estate his executor has no authority over the first estate. An administrator, with the will annexed, must be appointed.

2. Duties of Administrator. An administrator is a person authorized by the court to manage and distribute the estate of an intestate or one who has died without leaving a will. He derives all his authority from the court, but his duties are substantially the

same as those of an executor, except that instead of disposing of the residue of the estate after the debts are paid as the will directs, he must distribute it as the law requires. He has no will to guide him unless he is an administrator with the will annexed. Ordinarily the same persons are appointed general administrators as are appointed "with the will annexed," and in the same order, namely: 1st. The husband or wife of the deceased. 2d. The next of kin; and 3d. The creditors of the estate, the largest creditor taking precedence. But the court need not appoint any one of these unless he is competent.

The administrator must give a bond the same as an executor, and he must prepare and return an inventory of the estate, collect the assets, pay the debts, distribute the residue, and file an account as required by law. In doing these things he should be guided by the directions given at the probate office; though if the estate is large, or important rights are involved, a good attorney should always be employed to supervise the work.

3. Inventory of Assets. The executor or administrator must make and return an inventory of the estate. It should contain a full and complete description of all the real estate, goods, chattels, rights and credits of the deceased. Real estate lying in another State need not be inventoried, for that must be administered upon in the State where it lies; but personal property situated in another State should be inventoried. (38 N. Y., 397.) And the executor or administrator should make diligent search and inquiry for all property belonging to the estate. Produce, growing crops, fruit, and provisions, should be inventoried. Every article of personal property, including animals, should be described separately, except sheep, swine, and poultry. These may be described by lots. Household furniture may be, for convenience, grouped in sets. In describing mortgages, notes, and judgments, give their dates, amounts, rate of interest, names of persons against whom they are held, dates and amounts of indorsements, etc. All the real estate should be accurately described. The descriptions can usually be got from deeds or other papers. If the real estate is incumbered the incumbrances should be fully described. It will be well to procure and attach to the inventory an abstract of title to the real estate.

If the deceased was a member of a partnership the surviving partner is entitled to the possession and management of the firm assets for the purpose of selling them and closing the business.

(27 Mich., 537.) But the administrator may insist that the assets be sold and the business closed. (9 Paige, 178.)

4. Appraisers. After the inventory has been prepared there is generally provision in the several States for having the items composing it appraised by two or more disinterested persons appointed by the court for that purpose. After being duly sworn their duty is to set down opposite each item in the inventory the just value thereof in money. For the purpose of arriving at a fair estimate of the value of assets, the appraisers should examine the same if necessary. They should make their appraisal at what they regard as a fair cash value. The inventory and appraisement, when duly certified, should be returned to the court or to the administrator. A separate inventory and appraisement should usually be made and returned of the household furniture and such other property as may be allowed the widow under the local statute. Such property is not regarded as assets in the hands of the executor or administrator.

5. Payment of Debts. The next duty of the executor or administrator, is to pay the debts of the deceased. These are paid out of the personal estate, including the growing crops, fruit, etc., and if not enough can be got from such source to liquidate the indebtedness, a portion or the whole of the real estate may be sold for the purpose, under the direction of the court.

The debts must be paid in a certain order; that is to say, certain claims take precedence of others, and must be paid in full, though there are not sufficient assets to pay all. The order of payment of debts is not exactly the same in all the States, but is substantially as follows:

First. Funeral expenses.

Second. Expenses of last sickness.

Third. Debts due the United States.

Fourth. Debts due the State.

Fifth. Claims of creditors generally.

It should be remarked that if the estate has not sufficient assets to pay all its debts, the executor or administrator should, as soon as he finds such to be the case, report the estate as insolvent to the Court, and thereafter he should follow the requirements of the law of the State and the rules of the Court regarding insolvent estates.

6. Commissioners on Claims. Where the estate is large and there are many debts, there is usually a provision for the

appointment, by the Court, at its discretion, of two or more disinterested and suitable persons as commissioners, to receive, examine, and adjust the claims of all persons against the estate. The appointment is generally made on the application of the executor or administrator, and it is best for him to have it done, as it relieves him from much responsibility.

The Commissioners may receive instructions from the Court at the time they receive their commission. They are required to give certain notice of the time and place of holding meetings, and they are given a certain length of time in which to hear the claims. Claims that are not presented within the time limited become barred. Six months is the time usually allowed to creditors to present their claims, though the Court may extend the time if it seems necessary up to two years, after which no claim can be presented.

The Commissioners then make and return a report of their doings duly verified. An appeal may be taken from the action of the Commissioners to the Court. Commissioners are paid, out of the estate, usually from two to five dollars per day.

7. Distribution of Assets, Etc. When the report of the Commissioners on Claims is confirmed, and the executor or administrator has paid the claims in the order heretofore given, he then pays the legacies, or distributes the residue, as the case may be, under the direction of the Court. Having done this, he makes and files a final account of his transactions. Notice of the hearing of this account is then given. Any one interested may appear at the hearing and object to its allowance. But if the account is allowed, and no appeal is taken, the executor or administrator is given his discharge, and the estate is closed.

8. The Probate Court. The tribunal having jurisdiction over the estates of deceased persons is generally styled the Probate Court. In some States it is called the Surrogate Court, and in others the Orphan's Court, but its powers are very similar all over the country. It is a purely statutory court and derives all of its powers from the statute. Its judge is generally a county officer and his jurisdiction is limited to the county. It is a court of record and has a seal. Statutes conferring power upon it are to be liberally construed. (31 Barb., 544.) Where authority for its action can be reasonably inferred from the language of the statute the authority is regarded as granted; but where the Court assumes powers not plainly conferred by law its acts are void. (12 Wend., 492.)

PART II.

- 1. CONCERNING NOTARIES PUBLIC.**
- 2. PARLIAMENTARY PRACTICE.**
- 3. GLOSSARY OF LAW TERMS.**

CHAPTER I.

NOTARIES PUBLIC, THEIR DUTIES AND LIABILITIES.

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|---------------------------------|----------------------------------------|
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| 2. How to get the Office. | 15. Rules of Conveyancing. |
| 3. Qualifying. | 16. Protesting Commercial Paper. |
| 4. Jurisdiction. | 17. Protesting Promissory Notes. |
| 5. Duties of a Notary. | 18. Days of Grace. |
| 6. Liability of a Notary. | 19. Bills of Exchange. |
| 7. Taking Affidavits. | 20. Place of Payment. |
| 8. The Jurat. | 21. Protest, Form of, etc. |
| 9. Depositions. | 22. Notice of Protest. |
| 10. Administering the Oath. | 23. Shipping Protests. |
| 11. Acknowledgments. | 24. Protests as Evidence. |
| 12. Wife's Acknowledgment. | 25. Special Duties of Notaries. |
| 13. Seals. | |

1. The Office of Notary Public is the most common one of a legal character, as well as the most indispensable one in the community. Hardly any important business transaction can be completed without a notary's aid. In the commercial world his most frequent duty is that in regard to protesting commercial paper. In business and farming communities he is called upon principally to take acknowledgments, administer oaths, and attest written instruments. In rural communities he is often called upon to draw contracts and deeds, or to give legal advice, and he should be at least well qualified to draw such instruments and to see that they are executed accurately and legally.

2. How to Get the Office. No qualification is required as a condition to holding the office of notary public, except that the candidate be of age and able to give the required bond that he will faithfully discharge his duties. The governor of the State makes

the appointment, which, like all executive appointments, must be confirmed by the State senate, if in session. If not in session the appointment holds only till the close of the next session, otherwise the appointment is for four years. Application should be made in writing to the governor, either directly or through a member of the legislature, which latter is the more frequent and better method. The applicant should present his full name carefully written out with his full address, including the county in which he lives. It is discretionary with the governor whether he will grant or refuse the appointment, and if he refuse, even without cause, the applicant has no redress. But it is customary to grant commissions to every competent person who may make application. The commission when duly signed is sent to the county clerk for the county in which the applicant resides, who gives notice of its arrival to the appointee. Within twenty days after such notice the applicant must "qualify" or he will forfeit his commission.

3. Qualifying. The process of qualifying consists in taking the required oath of office and giving a bond conditioned on the faithful discharge of the duties and paying the required fee, which in Michigan is one dollar. The oath is to support the Federal and State constitutions and faithfully discharge the duties of the office. The bond is made to the People of the State, usually in the sum of one thousand dollars, and must be signed by the appointee and one or more sureties approved by the clerk.

4. Jurisdiction. A notary may act in any part of the State, but he must continue to reside in the county for which he was appointed. He forfeits his office by removing to another county. Any records which a notary may have relating to his office, must, upon his resignation or removal from office, be deposited with the clerk of his county, and the executor of any deceased notary must so deposit them within three months after his appointment.

5. Duties of a Notary. We shall briefly go over the principal duties of notaries in the State of Michigan, setting them forth in such plain language as will enable every citizen to discharge the duties creditably and safely. By an act of Congress, notaries are authorized, wherever the federal jurisdiction extends, to exercise the same powers as United States Circuit Court Commissioners in respect to taking affidavits and depositions, and the taking of testimony to be used in the United States Courts. In Michigan and many other States they are specifically empowered to administer

oaths and take affidavits in any matter or cause pending or to be commenced or moved into any court of the State, and they are given the powers exercised by notaries under the law of Nations, commercial usage, or the laws of any other State or country. It will be thus seen that the duties and powers of a notary are very important and are by no means the trifling matter they are sometimes supposed to be.

6. Liabilities of a Notary. The notary is a ministerial officer. He has no discretionary powers. He is bound to understand his duties and to perform them with diligence and care, and he is liable for any injury that may result from his negligence or misconduct in office. Any person who is aggrieved by any delinquency or misconduct of a notary may prosecute him on his official bond. For his willful misdoings he is sometimes punishable criminally. When we reflect that the value of note or bill often depends upon its proper protest, we see that the responsibilities of a notary may be very large.

7. Taking Affidavits. One of the most common duties of notaries is that of taking affidavits; this they are authorized to do by the statutes of most of the States. The notary should write out the affidavit in due form after learning the facts from the person who is to sign it. This person is called the affiant or deponent. The notary should use great care to express clearly the facts given him, and while stating fully those facts, to state no more than the deponent knows and can swear to. The affidavit should then be read to the affiant and he should sign the same, after which the notary should administer the oath; that is, "swear" the affiant, and should then affix the *jurat* or official certificate that the affidavit has been duly sworn to. The affidavit should be commenced by giving the State and the name of the county wherein it is made, followed by the letters "ss," thus:

STATE OF MICHIGAN, }
County of Oakland. } ss.

Then should be given the name of the affiant, thus: John Doe, being duly sworn, deposes and says that [here set forth clearly the facts.] After the signature the *jurat* should be attached in this form: Subscribed and sworn to before me, this twentieth day of March, A. D. 1885. Richard Roe, Notary Public, Oakland Co., Michigan. If there are several affiants the affidavit should read "being severally sworn, each for himself respectively deposes."

If the affidavit relates to a matter in litigation, it should be preceded by the name of the Court and the title of the cause. The names of all the parties to the suit should be given in full. If the affidavit is one that is required by law to be made by a certain person, as by an attorney or an agent, it is not enough to simply describe the deponent as such attorney or agent; but the fact that he is such must be specifically set forth and sworn to, and generally any material fact must be specifically set forth and not merely incidentally set forth by way of description. The affidavit should always be signed by the person making it. An affidavit should never be made before a notary who is the attorney in the case in which it is to be used. Partnership names cannot be signed to an affidavit. The affiants must sign and be sworn separately.

8. The Jurat. The form of jurat above given would be sufficient in most instances, but more formal jurats are required to some instruments like bills of complaint, petitions, etc., see forms in Part III.

9. Depositions. A deposition is the testimony of a witness reduced to writing, in due form, under authority of some court, and to be used in a trial. When taken by a notary he first administers an oath to the witness that in the proceedings pending in the court (naming it) between the parties to a cause (naming it) he will tell the truth, the whole truth, and nothing but the truth. He then writes down the testimony, either by giving it as a continuous narrative, or by giving the questions made by the examiner and the answers to them. The deposition must be read to and signed by the witness, and the notary must attach his jurat.

10. Administering the Oath. After the affidavit or deposition has been signed by the officer and person swearing, each raising their right hands, the officer uses the following words: "you do solemnly swear that the contents of the affidavit subscribed by you are true, so help you God." To which the affiant or deponent must say, "I do." If he is a Quaker, or is conscientiously opposed to taking an oath, the following form may be used: "you do solemnly affirm under the pains and penalties of perjury, etc."

11. Acknowledgments. A common duty of notaries is that of certifying acknowledgments. Deeds, mortgages, and other instruments relating to real property are required to be acknowledged before they can be put upon record. The certificate of acknowledgment is placed at the end of the instrument. In our

modern conveyancing blanks the formal parts of it will invariably be found printed there. For forms see Part III. The notary's duty is to fill in the blanks and attach his signature, office, and seal. The seal is not required in many of the States.

When a husband and wife join in the execution of a deed it was formerly, and in some States is still, required that the notary examine the wife separate and apart from the husband, and ascertain from her that she executed the instrument of her own free will and without fear or compulsion from any one. In this case there must be a separate certificate of the wife's acknowledgment, as shown in the forms. In all cases the notary should ask of the person acknowledging whether he acknowledges the instrument as his free act and deed.

An acknowledgment must never be taken by a notary who is the grantee in the instrument, but there is nothing to prevent it being taken by a relative of the parties to the instrument. The acknowledgment is not a part of the instrument so far as the transfer of property is concerned, and the deed or instrument will usually be valid without it. See page 45. The certificate should show that the officer was one authorized to take acknowledgments, that the grantor was personally known to him, and appeared personally before him and acknowledged the deed to be free and voluntary. No particular words are necessary, but it will be well to follow the forms given, nor is it necessary that the officer should have long known the grantor, though he should take precaution to identify the person acknowledging with the grantor.

12. Wife's Acknowledgment. When the acknowledgment is taken of an instrument conveying lands in another State, the form of the acknowledgment must comply with the requirements of that State, as the law of locality governs the transfer of lands. Many States still require that the wife's acknowledgment shall be taken separately and apart from her husband, and that she should acknowledge that she executes the deed freely, and without fear or compulsion from any one. In this respect the notary should examine the statutes of the different States and be certain that he complies strictly with their requirements in making his certificate of acknowledgments. The certificate of acknowledgment should always be so headed as to show the State and the county in which it is made. The officer should not only sign his name in full, but also write the title of his office at the end of the certificate, and he

should describe himself in his official character in the body of the certificate.

13. Seals. Formerly notaries authenticated their certificates by their official seals, but in many States seals are not now required. They are not required in Michigan nor in Massachusetts. Though an acknowledgment taken abroad before a commissioner for Michigan must be authenticated by his seal. It is well, however, for notaries to have seals and to use them whenever they take an acknowledgment of an instrument to be used in another State.

14. The Certificate of Acknowledgment should be on the same piece of paper as the deed, and should not be on a separate piece of paper from the deed, or wafered or attached by other means.

Certificate of Regularity. The laws of many States require that when deeds of property within their borders are executed in any other State, such deed will be valid if executed in accordance with the requirements of that State; but in such cases there must be attached to the certificate of acknowledgment a certificate signed by the county clerk and impressed with the seal of the circuit court, stating that the acknowledging officer is what he assumes to be; that he is authorized by the laws of the State to take the acknowledgment, and that the signature attached to the certificate is genuine. Such a certificate is required in Dakota, Florida, Illinois, Nebraska, New York, Ohio, Oregon, Wisconsin, Wyoming, and Canada.

15. Rules of Conveyancing. The notary should know enough of these rules to be able to draw a deed or mortgage accurately. In the chapter on deeds will be found many directions which, with the forms appended and the exercise of care, will enable the notary to avoid many errors commonly met with.

16. Protesting Commercial Paper. A most important and delicate duty required of notaries public is that of protesting promissory notes, and bills of exchange. This consists in certifying to the fact that the note was not paid or the draft was not accepted on a proper demand. The value of commercial paper often depends upon its being properly protested, and every notary should prepare himself to attend to this formality, for a blunder in the performance of it may result in a loss of the debt secured by the paper, for which loss the notary may be liable.

17. Promissory Notes. When a note, duly endorsed, falls due, demand of payment must be made to the maker of the note, and if payment is refused the note must be protested and notice thereof at once given to the endorser, otherwise he will not be obliged to pay it.

18. Days of Grace. In paying commercial paper a certain time, called "days of grace," is allowed by commercial law after the time of the paper expires. Three days are usually allowed for grace. The notary should acquaint himself with the statutes of his State upon this subject. In Michigan three days of grace are allowed on all bills of exchange payable at sight or at a day certain, and on all notes, orders, and drafts, payable at a future day, unless there is an express stipulation to the contrary; but bills of exchange, notes, or drafts, payable *on demand*, are not entitled to grace. In computing the days of grace, Sundays and legal holidays are counted in, and the demand of payment is made on the third day unless it falls on a Sunday or a legal holiday, in which case the demand is made on the day preceding. The legal holidays in Michigan are January first, February twenty-second, May thirtieth, July fourth, the day appointed for Thanksgiving, and December twenty-fifth.

19. Bills of Exchange. A bill of exchange is a written order from one person to another, directing the person to whom it is addressed to pay to a third person a certain sum of money therein named. The person making the bill is called the drawer, the person to whom it is addressed is called the drawee, and the person to whom it is given is the payee. The drawer must pay the bill if the drawee refuses to accept it, provided the bill is properly presented for acceptance. The drawee is not liable until he has accepted, which is done by writing the word "accepted" on the face of it and signing his name beneath it. If he declines to do this, or if after having done it he fails to pay the bill at maturity, it must be protested for non-acceptance or non-payment, as the case may be, in the method above laid down for promissory notes. What has been said regarding the protest of notes, and the forms given in the connection therewith will apply, with a slight modification, to the protest of inland bills of exchange.

20. Place of Payment. If the place of payment is designated on the paper it may be presented at that place, if not, it

should be presented at the residence or place of business of the maker, or payment may be demanded of him personally wherever he is found. The demand, however, should be made during business hours. It should be actually made by presenting the note and demanding its payment. If the maker is not found at the place designated for payment, or if he refuses payment when demanded, the notary at once makes protest. This is done by "noting the protest," that is marking upon the face of the note the fact of the demand, the time of making it, the cost or charges, and the name of the party on whom the demand was made, signed by the notary's initials. The actual protest is a formal paper setting forth all the facts.

21. Protest, Form of, Etc. This is an instrument in which the notary certifies that on the day of its date he presented the original note to the maker thereof and demanded payment, which was refused, and thereupon he protests against the endorser for damages, costs, and interest. This is the form in common use:

CERTIFICATE OF PROTEST.

STATE OF MICHIGAN, }
County of, } ss.

BE IT KNOWN, That on the ... day of in the year of our Lord one thousand eight hundred and eighty-..., at the request of, I a Notary Public, duly admitted and sworn, dwelling in county and State aforesaid, did present the original which is hereto attached, at the and demanded thereof, which was refused.

WHEREUPON, I, the said Notary, at the request aforesaid, did PROTEST, and by these presents do solemnly protest, as well against the Drawers, Makers and Endorsers of the said as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, charges, damages and interest already incurred and to be incurred by reason of the non-.... of the said

And I, the said Notary, do hereby certify, that on the same day and year aforesaid, due notices that said had thus been presented for and that thereof had been thus demanded and refused, and that the holders of the said did and would look to the Drawers, Makers, and Endorsers thereof for payment of the same, were put into the postoffice at with the full

legal postage paid thereon, and directed as follows, after diligent inquiry being made for the residence and place of business of the Drawers and Endorsers:

Notices for directed

“ “ “

And I further certify that notices were left as follows:

Notice left for at

“ “ “ “

Each of the above named places being the reputed place of residence or business of the person to whom the notice was directed, or to whom it was left aforesaid.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal of office.

.....

Notary Public.

22. Notice of Protest. Immediately after “noting the protest” the indorser should be notified of the demand and protest. The notice should state, first, that the paper was not paid at maturity; second, that it has been protested for non-payment, and third, the notice should identify the paper in some way, usually by a copy. The following is a form in common use:

Mr.....,,, 188..

TAKE NOTICE, That the for \$.... made by, dated, payable after date at, and endorsed by you, has this day been presented and demand made for thereof, which has been refused; said has been duly PROTESTED for non-payment, and the holder now looks to you for payment of the same.

Yours, &c.,

.....

Notary Public.

This notice should be served personally upon the endorser if he resides in the same town; or, if he lives elsewhere, by the earliest available mail. In Michigan the statute provides that if the endorser has his residence in the city, village, or township where the paper is payable, the notice of protest may be deposited, postage prepaid in the postoffice at such place, properly directed. If payable elsewhere, notice may be sent to him prepaid and properly directed. Still it is better to serve the notice personally if possible. The service will be good if the notice is left with the person in

charge of the endorser's place of business; or it may be left at his residence with the person in charge thereof. If sent by mail it will be sufficient if sent to the office where the endorser is in the habit of receiving his letters. Where an endorser lived in the woods, twenty miles from any postoffice, it was held that notice should be given to him personally or by special messenger.

23. Shipping Protests. A marine or shipping protest is made by a vessel master or by a merchant who ships goods or who charters a vessel, and the notary's office is simply to authenticate the instrument, just as he would attest an affidavit or take an acknowledgment to a deed. Such a protest is a declaration or narrative of the particulars of the voyage, storms encountered, the accidents that may have occurred, and the conduct which, in cases of emergency, have been pursued. It is a sort of precaution taken to perpetuate evidence in cases involving loss or damage which are likely to become the subject of litigation. If any thing in the course of a voyage occurs which is at all unusual or may affect claims for marine insurance, or furnish a basis for claims against the ship owners, the vessel owner as soon as he reaches a port where he can do so makes a protest of the facts as above set forth.

24. Protests as Evidence. As has been stated, the making of a protest is a precaution taken for the purpose of preserving evidence. To be admissible as such, marine protests should be made as soon as possible after reaching a port where there is authority empowered to receive them. A protest has been held inadmissible unless made within twenty-four hours after reaching the port of destination. (9 Penn. St., 390.)

25. Special Duties of Notaries. The statutes of the different States have granted other and special powers to notaries, and under the federal bankrupt act they were authorized to take proofs against the estates of bankrupts. In Michigan proof of claims against insolvents, who have made assignments for the benefit of creditors, may be made before notaries. Notaries may also act as circuit court commissioners in certain cases on an order from the circuit judge of the county. Any notary who is an attorney of the supreme court may act as a circuit court commissioner in any particular case where it is shown that there is no such officer in the county, or where the regular commissioner is disqualified by being connected with the case.

CHAPTER II.

RULES OF ORDER FOR DELIBERATIVE BODIES.

Importance of the Subject. In this democratic country some knowledge of parliamentary procedure is necessary for every one. The workman in the guild, the capitalist in the stockholder's meeting, the citizen in the town meeting, the politician in the political convention, and the law maker, in the halls of legislation, have a common need of knowledge as to the proper conduct of a deliberative assembly. The humblest citizen is likely to be called upon to use this knowledge in any or all of the above capacities, and he should prepare himself for the emergency.

A Ready Reference. For the sake of quick reference, the subjects treated are here enumerated by sections, with the page indicated upon which each may be found:

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1. Sources of Parliamentary Law. As the name indicates, parliamentary law or practice is the law or rules governing the Parliament of England. It is the body of rules and regulations developed with the growth of that great deliberative assemblage. Most of it there took origin, and its general principles were there long ago settled. In the United States the practice of the National House of Representatives, which is based upon the usages of the English House of Commons, is the source of our law upon this subject. Of course not every matter of detail can be settled by the rules of Congress, nor does every rule of Congress apply to the conduct of every assembly. But the great parliamentary questions, such as what motions can be made, what can be debated, what their effect, what their order of precedence, etc., are all settled by the rule of the House of Representatives. Many minor questions not arising in Congress have been settled by the long practice of other assemblies, as will be seen.

2. Organization of a Meeting. Whenever people come together for the purpose of deliberating upon any matter, it is

necessary that they proceed in an orderly manner, in accordance with definite rules of procedure, otherwise there would be no progress nor accomplishment. The first thing in order is to organize the meeting. Generally such a meeting is called by some self-constituted committee, or by some person whose position or influence gives him a semblance of authority. Shortly after the time appointed for the meeting, some one interested in calling it, or any person present, rapping upon a table or otherwise attracting attention, says: "The meeting will please come to order. I move that Mr. A. act as chairman of this meeting." Any one else present may say: "I second the motion." The first speaker then puts the question to vote by saying: "It has been moved and seconded that Mr. A. act as chairman of this meeting, those in favor of the motion will say *aye*." When the affirmative vote has been taken he says: "Those opposed will say *no*." If it seems that a majority of those present said *aye*, he says: "The motion is carried, Mr. A. will please take the chair." If the motion was lost, he announces the fact and calls for the nomination of some one else for chairman, with which nomination he proceeds as in the first case. This is the most approved method of getting a presiding officer, though there are others less formal. In large meetings the person who thus nominates the chairman may appoint a committee, or may act himself as a committee to conduct the chairman to the chair.

On assuming the chair the chairman may, if he chooses, make a short speech, thanking the assembly for the honor conferred upon him, and if proper, touching briefly upon the objects of the meeting. He then says: "The next business in order is the election of a secretary." Some person present should then say: "Mr. Chairman, I nominate Mr. B. as secretary." The chairman then puts the question. If several nominations are made, the chairman should announce as he hears the names: "Mr. B. is nominated," "Mr. C. is nominated," etc. He then puts the question on the first name mentioned, saying: "As many as are in favor of Mr. B. acting as secretary will say *aye*." After the "*ayes*" have voted he says, "those opposed will say *no*." If the "*ayes*" have it he announces the fact and requests the secretary to take a seat near the chair. If the motion is lost the question should be put upon the next name mentioned, and so on until one is elected. The secretary should keep a careful record of all the proceedings.

When no other officers are needed, and usually in ordinary meetings none are, the chairman here inquires: "What is the further pleasure of the meeting?" If the meeting is one called simply to consider and pass upon some special subject, some one interested in the matter, having previously prepared a set of resolutions should at this point say: "Mr. Chairman, I move the adoption of the following resolutions,"—which he then reads and hands to the chairman. The meeting having been thus organized may proceed to debate the resolutions, and may amend, adopt, or otherwise dispose of them in accordance with the rules hereafter set forth.

3. An Occasional or Mass Meeting. This is a meeting the call or invitation to which is extended to the people generally. Any member of the community may feel at liberty to attend and take part in its deliberations. It is organized in the manner above set forth. Mass meetings are often called when it becomes important to know the sense or feeling of the community upon any question that may arise. They are usually called by a self-constituted committee.

4. A Political Meeting. A political meeting is like a mass meeting, except that its object, instead of being to gather the views of the community upon any given subject, is to spread the views of some individual upon some question of politics. Political meetings are generally arranged by a local committee who select the officers and provide a programme of exercises,—the principal feature of which is usually a speech from some prominent politician. The officers selected are a president, secretary, and often a large number of vice-presidents appointed merely for complimentary purposes. The latter occupy seats on the platform beside the president, and when he is absent or vacates the chair, the first vice-president on the list should act in his stead. When the meeting is not previously organized by a committee it should be organized in the manner indicated for a mass meeting, except that when the officers have been duly elected the chairman, instead of inquiring "the further pleasure of the meeting," should announce the speaker or speakers of the occasion in their regular order.

5. A Caucus or Primary Meeting. This is a meeting of the members of a political party held for the purpose of electing delegates to a convention. It is really the only place where the American citizen acts directly in politics. The meeting is gener-

ally called by a standing committee. It is organized in the manner indicated for an occasional meeting. The voting is usually by ballot, but may be by acclamation if there is no objection. The tellers are appointed by the chairman. The delegate receiving the largest number of votes is elected. Where there are several delegates to be chosen the vote is taken upon the first, then upon the second, and so on in their regular order. The clerk of the meeting should provide them with proper credentials.

6. A Convention or Meeting of Delegates. In a convention, or assembly composed of delegates, it is necessary to first form a preliminary organization in order to ascertain who are properly the members of the assembly and entitled to vote. The temporary organization is effected in the manner described for an occasional meeting, by the election of a temporary chairman and secretary. The first business in order is the appointment of a committee on credentials. This committee consists of three or more members, according to whether the convention is a small or large one, and it is usually appointed by the chair. In large State conventions the committee is generally made to consist of one member from each county delegation, and his name is announced by the chairman of each county delegation as the secretary calls the roll of the counties. It is now customary to also appoint at this time a committee on "permanent organization and order of business," and a committee on "platform" or "resolutions." These committees in State conventions are generally appointed as above. After the committees are appointed the convention should take a recess for an hour or so to give the committees an opportunity to prepare their reports. On the re-assembling of the convention the first business in order is the report of the committee on credentials. This report consists of a list of the names of the delegates who are entitled to seats. After its adoption only those named in it are entitled to vote. The next business in order is the report of the committee on permanent organization, etc. This report should contain the names of those nominated for permanent officers, and also a programme of business. Its adoption has the effect of electing the permanent officers; upon which the temporary officers withdraw, and the permanent officers assume their duties and carry out the programme as reported. That programme should first provide for the report of the committee on resolutions, if it does not, that will be the first order of business any way.

7. Township Meetings. Town meetings are provided for by the statutes of the several States. For the most part these meetings are for the election of township officers, and the statutes relating thereto must be consulted and closely followed. There is, however, usually provision for deliberation at such meetings by the qualified electors of the township, upon many matters affecting the general welfare, especially as to the amount of money to be raised for various purposes by the township. At such deliberations the supervisor of the township presides, and the town clerk acts as secretary. The rules of parliamentary procedure apply to such deliberations, and the results arrived at have the force of binding law. Here is an example of the necessity for every citizen's possessing some knowledge of parliamentary law.

8. A Permanent Society. When it is desired to form a permanent society, those interested in it should invite the proper persons to meet at a certain time and place. A few minutes after the time appointed some one should step forward and say: "The meeting will please come to order; I move that Mr. A. act as chairman." Some one else should say: "I second the motion." The one who made the motion should put the question, as described in section two, and as there indicated, the chairman, when elected, should announce the first business in order, the election of a secretary. After the election of a secretary the chairman should call upon some member interested in organizing the proposed society to state the object of the meeting. When such member addresses the chair, and is recognized, he is then at liberty to speak upon that subject. Exact formality is not required. The chairman may call upon other members to give their opinion, or the names of particular persons may be called out by members. The chairman should observe the wishes of the members so expressed. After there has been sufficient explanation in this informal way, some one should offer a resolution substantially like the following: "Resolved, that it is the sense of this meeting that a society for (here state the name or object of the society) should be formed in this town." The resolution, when stated by the chairman, would be open to debate and should be treated the same as any motion.

It is not necessary in all cases that such a resolution be adopted. A constitution and by-laws of the proposed society may have been previously prepared and may be submitted for adoption in the same manner as a resolution is; or some one may move that a

committee of five be appointed by the chair to draft a constitution and by-laws for the proposed society. Such a motion is debatable, and may be amended or adopted as the meeting may desire. Generally such a committee would not make its report until an adjourned meeting.

After such a committee has been appointed the chairman should inquire: "Is there any other business before the meeting?" or "what is the further pleasure of the meeting?" Usually a motion would then be made to adjourn to a certain time. Such a motion, when seconded and stated by the chair, is open to debate and amendment.

Sometimes a motion is made at an earlier stage of the meeting to fix the time and place of the next meeting. If such a motion has been carried, the motion at the close of the meeting would simply be "to adjourn." This motion cannot be amended or debated, and if carried the chairman declares that "the meeting stands adjourned to meet at _____," the time and place agreed upon.

At the second meeting the same officers serve until the permanent officers are elected. At the hour of meeting the chairman announces: "The meeting will please come to order. The secretary will read the minutes of the last meeting." If there are any errors in the secretary's minutes any member may call attention to the fact; if there is no objection the chairman, without waiting for a motion, directs the secretary to make the correction, and announces: "If there is no objection the minutes will stand approved as read (or as corrected, if corrections have been made)." The chairman next announces: "The hearing of the report of the committee on constitution and by-laws is now in order." The chairman of that committee, after addressing the chair and being recognized, reads the report and hands it to the chairman, or he may hand it to the chairman without reading it, in which case the chairman hands it to the secretary and directs him to read it. After the reading of the report the chairman says: "You have heard the report of the committee, what shall be done with it?" Some one should move "the adoption of the constitution as reported by the committee." If such motion is seconded the chairman says: "The question is upon the adoption of the constitution reported by the committee." The constitution may be adopted as a whole or article by article; the latter is perhaps the safer way. If that

course is followed, the chairman or secretary reads the first article of the constitution. The chairman asks: "Are there any amendments proposed to this article?" If none are offered the next article is read and the same question is asked, and so on. When the last article has been read, the chairman says: "The whole constitution having been read, it is open to amendment." Any one can now move amendments to any part of the constitution. Motions to amend are debatable, and when adopted the secretary should change the constitution accordingly. When it has been thus modified the chairman inquires: "Are you ready for the question?" If no one speaks the chairman says: "As many as are in favor of adopting the constitution as amended will say 'aye,' and (after a pause) as many as are opposed will say 'no.'" The chairman then, and in all cases after a vote, announces the result.

The chairman should, if the constitution has been adopted, state that it will now be necessary for those who wish to become members of the society to conform to whatever conditions the new constitution imposes upon membership. These conditions are usually that the members shall sign the constitution and pay an initiation fee. If the society is a large one it will be well to take a recess for this purpose, and a motion to that effect should be made and carried. The chairman, at the end of the recess, calls the meeting to order, and says: "The next business in order is the adoption of the by-laws." Some one should move the adoption of the by-laws reported by the committee, and they are then treated the same as the constitution. On the motion to adopt the by-laws, only those are permitted to vote who have become members. The next business in order will probably have been determined by the by-laws just adopted; if so, the chairman should announce it. Usually it will be the election of permanent officers of the society. In that case some one should move the appointment of a committee to nominate such officers, or, if the by-laws provide a different method, that should be followed. As the officers are elected they replace the temporary ones, and when the election is completed the society is organized.

9. Constitutions, By-Laws, Rules, Etc. It is a matter of much importance that the constitution and by-laws of any permanent society be correctly framed. If the society is one that will be likely to own real estate or much personal property, or will be likely to contract debts, it should be incorporated, that is, it should

be made a corporation under the laws of the State where it exists. For the reason that if this is not done the society will be, so far as its debts are concerned, in law, a partnership, and each member will be liable for the entire indebtedness; and so far as its real property is concerned the members will be tenants in common thereof, and difficulties will be encountered in case a sale is desired or any member should die.

The incorporation is usually effected by having articles of association duly executed and acknowledged and filed with the proper official. The statute providing for incorporation must be carefully followed and the services of a lawyer would be needed in the matter. If it is desired to have the society incorporated it will be well to instruct the officers, or a committee, to take steps to that end. A form for articles of association or charter, will be found in Part III.

In forming a constitution it will be well to procure copies of those adopted by other similar societies, or to get some approved form and follow it so far as its provisions are applicable. The form given in Part III. is drafted to suit the needs of a literary and debating society; but it can be modified to suit other kinds of associations. It may be observed that constitutions should contain only the frame-work or fundamental parts of the organization, and for stability should be made difficult of amendment. Previous notice of amendments should be required, and a two-thirds or three-fourths vote be necessary for their adoption. Constitutions generally need contain only five articles, providing for the following subjects: 1. Name and object of the society; 2. The qualification of members; 3. The officers, their election and duties; 4. Meetings of the society; and 5. Amendment of the constitution.

The by-laws should be more specific in their provisions. They should cover those points not provided for in the constitution which it is deemed necessary to have definitely settled. Where the character of the society is such that the common parliamentary rules will not apply to all its proceedings, such proceedings should be regulated by by-laws. The form of by-laws given in Part III. may be found useful to those who wish to draft a set of by-laws for any society. In addition to the constitution and by-laws, it will be well to adopt some manual of procedure as a standard of authority. Having done so, nearly every contingency will be provided for. But it should be remembered that these rules of

procedure have not the force of positive law, and that if they are not followed the action of the society is not thereby rendered void.

10. Motions, Questions, Etc. When a proposition is made to a deliberative assembly, it is called a *motion*; when stated to the assembly by the chairman, it is called a *question*; and when adopted it becomes the resolution, order, or vote of the assembly, as the case may be. Business should be brought before the assembly by a motion of a member, who, having addressed the chair and been recognized, is said to have "obtained the floor" for that purpose. When two or more members rise at the same time the chairman decides who is entitled to the floor by announcing the member's name. Usually the one first to arise should be recognized. The motion, having been seconded, is stated by the chair and then becomes the question.

11. Introduction of Business. Business may also be brought before the assembly by the presentation of a communication, in which case a motion should be made to receive the communication, or if it has been received without the formality of a motion, a motion should be made to dispose of it in some manner. The question having been stated by the chair, is in the possession of the assembly for debate, and cannot be withdrawn or modified without leave of the assembly or by moving an amendment. If several members rise to speak upon a question the chairman should first recognize the member upon whose motion the question was brought before the assembly. A member who has once had the floor is not entitled to it again while the same question is before the assembly, if the floor is claimed by any one who has not spoken to that question. After the floor is assigned to a member he cannot be interrupted by calls for the question, or by motion to adjourn, or for any other purpose except 1. A call to order; 2. An objection to the consideration; 3. A call for the order of the day (if such has been made), or 4. By a motion of privilege requiring immediate action. A member arising for any of these four purposes should state at once his reason for interrupting.

12. Principal Motions. These are motions bringing before the assembly new matters for consideration. They can not be made when any other question is before the assembly. They take precedence of nothing and yield all privileged, subsidiary, and incidental motions.

13. Subsidiary Motions. These are such as are applied to

other motions for the purpose of disposing of them. They take precedence of a principal question, that is, they must be decided before a principal question can be acted upon. They yield only to privileged and incidental questions. Subsidiary motions and their order of precedence among themselves are: 1. To lie on the table; 2. The previous question; 3. To postpone to a certain day; 4. To refer to a committee; 5. To amend; and 6. To postpone indefinitely.

14. Incidental Questions. These are such as arise out of other questions and consequently must be decided before such questions. They can not be amended, and yield only to privileged questions. They are as follows: 1. To appeal; 2. Objection to the consideration of the question; 3. For the reading of papers; 4. For leave to withdraw the motion; and 5. Suspension of the rules.

15. Privileged Questions. These are such as because of their importance, take precedence of all others. They are usually undebatable and must be voted upon at once. They are: 1. To fix the time to which to adjourn; 2. To adjourn; 3. Any question relating to the rights of the assembly or of its members; 4. To proceed with the order of the day.

16. Order of Precedence of Motions. A motion that may be made while a question is before the assembly is said to take precedence of that question. The following motions are arranged in the order in which they take precedence of each other.

17. To Fix the Time to Which to Adjourn. This takes precedence of all others, and is in order even after a vote to adjourn has been taken, if the the chairman has not announced the result of that vote. It is undebatable if made when another question is before the assembly. It can be amended only by altering the time.

18. To Adjourn. This motion takes precedence of all except the motion above mentioned. It can not be debated, or have any motion applied to it, or be reconsidered. If lost it can not be repeated unless there has been intervening business. Its effect is to adjourn the assembly to the next regular time of meeting. And unfinished business is the first in order at the next meeting after the reading of the minutes, unless the next time of meeting is more than a year from then, in which case an adjournment puts an end to all unfinished business.

19. Rights of Members. Questions relating to the rights of the assembly or its members takes precedence of all excepting the two last mentioned. When such a question is raised the chairman must decide whether it is a privileged one or not, and from his decision an appeal may be taken by any two members. Such questions may be referred, or laid upon the table, or have any other subsidiary motion applied to them. As soon as they are disposed of the assembly resumes the consideration of the question interrupted.

20. Orders of the Day. When any matter has been set for consideration at any particular day or hour, it becomes "the order of the day" for that time, and it cannot be considered before unless by a two-thirds vote. When the day or hour arrives the motion calling the matter up takes precedence of all others but the three last mentioned. It is customary for many bodies to adopt a regular order of business for the day.

21. Appeals and Questions of Order. When a point of order is raised by a member, it takes precedence of the question giving rise to it, and must be decided promptly by the chairman without debate. If any member objects to the decision, he may say: "I appeal from the decision of the chair." If the appeal is seconded, the chairman at once states the question, "Shall the decision of the chair stand as the decision of the assembly?" A tie vote sustains the chair. Any privileged motion, if made pending an appeal, takes precedence of it. An appeal can not be amended nor debated if it relates simply to indecorum, or to transgressions of the rule, or if made while the previous question is pending. In other cases it can be debated, and in all cases the chairman can state the reason upon which he bases his decision. The vote on an appeal may be reconsidered. A member desiring to raise a point of order should say: "Mr. Chairman, I arise to a point of order." The chair requests the member to state his point of order. Which he may then do and the chair at once pronounces his decision. If no appeal is taken the first member resumes his speech, unless the decision was that he is out of order, without a vote of the assembly to that effect.

22. Objection to the Consideration of a Question. When any principal motion is put and the question upon it stated, any member may object to its consideration, and the objection need not be seconded. It can not be debated or amended, but the chair-

man immediately puts the question: "Shall the question be considered?" If decided in the negative by a two-thirds vote the whole matter is dismissed for that session, otherwise the discussion continues as if the objection had not been made.

23. Reading Papers. Where a motion is made relating to any papers which have been laid before the assembly, every member has the right to hear such papers read at least once before having to vote upon them. And the chairman should direct them to be read when it has been asked for information, and not for delay. If an objection is made a motion is necessary, which motion takes precedence of the principal question and can not be debated or amended.

24. Suspension of the Rules. Where rules of debate have been adopted they can not be suspended, except for a definite purpose, and only by a two-thirds vote. When for any purpose it is desirable to suspend them, the motion should be made in this form: "I move to suspend the rules which interfere with (supply the object)." Such motion is not debatable, it can not be amended or reconsidered.

25. To Lie on the Table. This is a subsidiary motion and takes precedence of all others of its class, yielding only to privileged and incidental questions. It is not debatable, can not be amended, and if decided affirmatively can not be reconsidered. Its effect is to remove the subject from consideration until the assembly votes to take it from the table. It carries with it everything pertaining to it, so that if an amendment be laid upon the table the subject which it amends goes there with it.

26. The Previous Question. The object of this motion is to suppress debate and bring the assembly to a vote upon the principal question. Free debate is always desirable, and is allowed upon all motions which have the effect of adopting or finally disposing of any original question. Yet a minority may make improper use of this privilege and so may obstruct and delay business. It is necessary, therefore, to have methods by which debate may be closed. If it seems that a member or faction is talking just to consume time, any member obtaining the floor may "call for the previous question." If the call is seconded, the chairman instantly puts the question: "Shall the main question now be put?" If it is carried by a two-thirds vote all debate must stop, unless the pending measure is one which has been reported from a commit-

tee, in which case the committee man reporting it has, as in other cases, a right to close the debate. The chairman then puts the matter to vote, first on the motion to amend, if that has been made, and then on the main question as amended. The previous question takes precedence of every debatable question, and yields only to privileged and incidental motions, and the motion to lie on the table. The previous question is sometimes called the "gag" law. It should require a two-thirds vote to carry it, though in the house of representatives the practice is to have it seconded by a majority, and it is then carried by a majority vote. It is not allowed in the U. S. senate. The previous question can be called for on an amendment, in which case, if it carries, it leaves the main question open for debate. Many societies have a rule limiting the time allowed for debate. In such societies the object of the previous question may be accomplished by simply insisting on the rule. Usually a member can not proceed beyond the limit of the rule unless he obtains unanimous consent.

27. To Postpone to a Certain Day. The effect of this motion is to carry the whole matter it refers to over to the time specified, and it can not be considered before that time except by a two-thirds vote. The motion takes precedence of the motion to commit, or amend, or to indefinitely postpone, and it yields only to the motion to lie on the table and to privileged and incidental questions, and the previous question.

It is not in order to postpone to a day beyond the end of the session.

28. To Refer to a Committee. Very many assemblies have regular standing committees appointed to consider various subjects, and it is customary to refer most matters to one of these committees before they are considered in the assembly. This is done by a motion "*to commit*," which takes precedence of the motions to amend or to postpone indefinitely. It may be amended by altering the committee or by giving instructions, and it is debatable. In societies having no committees it is sometimes desirable to create one for the purpose of referring to it some difficult or delicate subject that may have arisen. The motion then is "to refer to a committee to be appointed by the chair," or "to be elected," as the case may be.

29. The Motion to Amend. This is one of the most common motions. It takes precedence only of the question it proposes to

amend, yielding to all other motions. It may be made by moving to "*add to*," to "*insert*," to "*strike out and insert*," to "*substitute*" another motion for the one pending, or to "*divide the question*." Any amendment is in order which has a direct bearing on the principal question, though its effect may be to make the principal question have an exactly opposite meaning. For example: A motion for a vote of censure may be amended by inserting the word "thanks" in place of the word "censure." All motions may be amended except the motions to adjourn, to lie on the table, for the order of the day, for the previous question, to postpone indefinitely, to reconsider, and all incidental questions. An amendment of an amendment cannot be amended.

30. To Postpone Indefinitely. The effect of this motion is to remove the question from before the assembly during that session. It takes precedence only of the question to which it relates. It cannot be amended, but it opens to debate the entire question which it proposes to postpone.

31. To Reconsider. When any principal question has been acted upon by the assembly it cannot be taken up again during the same session, except by a motion "*to reconsider*." The motion to adjourn, and privileged and incidental motions (except a motion for the orders of the day and for a suspension of the rules), may be *renewed* after the transaction of intervening business, or the introduction of any motion which changes the state of affairs; but any main question, when once finally acted upon, is beyond the power of the assembly except on a motion to reconsider the vote. Such a motion may be made at any time during the day on which the vote was taken, but can only be made by one who voted with the prevailing side. It can be made even when another member has the floor, but is then only "entered on the minutes," and cannot be considered until the pending measure is disposed of. If then called up it takes precedence of every motion except to adjourn and to fix the time at which to adjourn. It cannot be amended, and is debatable or not, just as the question it calls up is or is not. If that question is debatable it opens the entire merits of the original matter, and if carried, places the original question in exactly the same position that it had before the first vote upon it was taken.

32. Committees. Most deliberative bodies have regular committees who do the preliminary work by way of preparing mat-

ters for formal action by the assembly. These committees are either "Standing Committees," which hold during the session, "Select Committees," appointed for a special purpose, or the "Committee of the Whole," consisting of the entire assembly. Committees usually proceed informally, and allow the greatest freedom of debate. Any member may speak as often as he wishes, and the only way to close or limit debate, is for the assembly, in case of the Committee of the Whole, to vote that debate in committee shall cease at a certain time.

Committees are usually appointed by the chairman who should observe this rule in his appointments. If the committee is one for action (as a committee of arrangement) only those should be placed upon it who are favorable to that action, and the person moving for the appointment of the committee should generally be made its first member. If, however, the committee is for deliberation and investigation, it is important that all parties be represented upon it, so that the fullest discussion may take place and thus the chances of unpleasant debate in assembly be diminished.

The first person named on the committee acts as its chairman, unless the committee by vote elect another. When the assembly resolves itself into the committee of the whole, the chairman calls upon any member to preside, and then vacates the chair. It can only consider the questions referred to it, and the only motions in order are to "amend" and "adopt." When it is through with the consideration of the subject referred to it, or wishes to adjourn, a motion must be made that "the committee rise and report." If the motion carries, the chairman resumes his seat, and the member who presided over the committee reports the progress made by it.

33. Reports of Committees. When a committee has completed its consideration of a question it embodies the results of its deliberations in a report. The report can only contain what is agreed to by a majority of the committee. The minority may also make a report, but it can only be considered by the assembly voting to substitute it for the report of the committee. A majority report commences: "Your committee on ——— to which was referred, etc., respectfully report, etc." A minority report commences: "The undersigned, a minority of the committee to which was referred, etc." The chairman of the committee usually reads the report to the assembly. This may be done after a vote to "*receive* the report," or without that formality. When the report

has been read, the committee, unless it is a "standing committee," is thereby dissolved, though it is revived by a motion to "recommit." When the assembly is ready to consider the report a motion should be made to "accept," "adopt," or "agree to" it. All of these have the same effect when carried, that is to make the action of the committee become the action of the assembly. When the report has been thus adopted it may be debated, amended, or treated just as though the matter had been introduced by a member and there had been no committee.

34. Debate. When a motion has been made and seconded, it is stated by the chair. It then becomes the "question," and if debatable, is open for discussion. A member desiring to speak upon it should rise in his seat and address the chairman by his proper title, as "Mr. Chairman," "Mr. President," "Mr. Speaker," "Mr. Moderator," etc., as the case may be. Parliamentary courtesy requires the presiding officer to first recognize the member who made the motion, or if the subject before the house is the report of a committee, the member who presented the report is first entitled to the floor. This member is also entitled to close the debate. Even after the previous question has been ordered, if the matter under discussion is the report of a committee, the committee man who made the report is entitled to close the debate, and is at once assigned the floor by the Chairman. With this exception, no member can speak more than once to the same question, nor longer than fifteen minutes at one time without leave of the assembly, and the question of granting leave shall be decided by majority vote without debate. The above limit may be changed by rule if circumstances require.

35. Decorum in Debate. A member, in debating, should confine himself strictly to the matter before the assembly. He should avoid all personalities. He should not reflect upon the motives of any member, but should confine himself to measures. He should not refer to other members by name, but should describe them in some other way, as "the gentlemen who have opposed this measure," or "the member who spoke last," etc. He must not use disorderly or discourteous words. When called to order he should sit down till the question of order is decided. If decided to be out of order he can not proceed, without leave of the assembly, expressed by a vote, upon which question there can be no debate. Disorderly words should be taken down by the clerk.

While they are being considered by the assembly the person having used them should retire from the room.

36. Punishment of Members. An assembly has the right to enforce its own laws, and to punish its members, but the punishment can only extend to the expulsion from the society. The society may, if necessary, give notice to the public that the member has been expelled, but it has no right to publish the charges against him. If it does its officers may render themselves liable for libel. The assembly also has the right to decide by vote or rule who may be present during the sessions, and to eject any person who disobeys such regulation, using only such force as is necessary, and the chairman may detail members to remove the person without calling upon the police.

37. Methods of Voting. There are several methods of voting in common use, as by word of mouth, or *viva voce*, by holding up the hand, by rising, by calling the "yeas" and "nays," and by ballot. The most common method is as follows: After the question has been stated, or if debatable, after it has been debated, the chairman says: "As many as are in favor of [here state the question] will say *aye*," after the affirmative vote has been expressed he says: "As many as are opposed say *no*." Or if the question is upon the adoption of some resolution or report, the chairman may say: "You have heard the resolution (or report) read; those in favor of its adoption will say *aye*," "those opposed will say *no*." The chairman should always distinctly announce the result of the vote, as "the motion is carried—the resolution (or report) is adopted." If he is uncertain which side has prevailed he may put the question a second time. When he announces the vote, if any member doubts his accuracy he may call for a "division." The chairman then says: "A division is called for; those in favor of the motion will rise." After counting these and announcing their number, he says: "Those opposed will rise." He then counts these, announces their number, and declares the result. If necessary he can appoint tellers to make the count. They should be selected from both sides of the question. Any member can change his vote before the result has been announced. The method of taking a vote by "yeas and nays" is for the chairman to state both sides of the question at the same time; the clerk calls the roll of the members, and as the name of each is called he rises and says "aye" or "no," according to whether he favors or opposes

the motion. When the roll call is completed the clerk reads the names of those voting in the affirmative, and afterwards those voting in the negative, that mistakes may be corrected. He then gives the numbers to the chairman who announces the result. This method is used in legislative bodies, but is not practical for mass meetings, or for ordinary societies. If there is a tie vote the question is usually decided by the casting vote of the chairman.

A majority vote is sufficient to decide all questions except the following: 1. To Amend the Rules; 2. To Suspend the Rules; 3. To Make a Special Order; 4. To take up a Question out of its Order; 5. To Sustain an Objection to the Consideration of the Question; 6. To Order the Previous Question. These require a two-thirds vote.

38. What is a Quorum? A quorum of an assembly is such a number as is competent to transact business. Unless there is a special rule upon the subject a majority constitutes a quorum. It is not unusual, however, to adopt a much smaller number, sometimes as small as one-tenth or one-twentieth of the members. The English House of Lords consists of about 500 members, but three members constitute a quorum. The House of Commons numbers about 650 members, and 40 constitutes a quorum. The U. S. Constitution provides that a majority shall constitute a quorum in the Senate or House of Representatives.

39. Order of Business. When a society or an assembly has no regular order of business, the following will be found useful as a guide:

1. Reading minutes of previous meeting.
2. Reports of committees.
3. Unfinished business.
4. New business.

40. Trial of Members of Society. Every assembly has the right to purify its own body, and may therefore investigate the character of its members, and may require them to testify in a trial for that purpose, and expel them if they refuse. Any member who feels that the conduct of any other member has been improper, may prefer charges against such other member. Such charges should be referred to a committee of investigation. Some societies have a regular standing committee whose duty is to receive complaints and report cases for discipline. The report of such committee need not go into details, but should contain a

recommendation of such action as the committee thinks proper. If the charges are trifling, they so report them and the matter drops. If serious, the report may recommend that the member be expelled, and the report should in such case close with a resolution fixing the time to which to adjourn, and instructing the clerk to cite the member to appear before the society at the adjourned meeting and show cause why he should not be expelled upon the following charges, stating the charges in full.

After a member has been thus cited to appear for trial he is theoretically under arrest, and is deprived of his rights as a member until his case is disposed of. At the adjourned meeting the trial takes place. If the accused does not appear, after receiving a written notice and copy of the charges from the clerk, that is usually a sufficient cause for expulsion. The report of the committee and the charges should be read. No other evidence may be necessary. The chairman of the committee acts as the prosecutor. He may introduce such other evidence as he thinks proper. The accused may appear with counsel if he desires, may make an explanation, may bring in witnesses, and either party may cross-examine the others' witnesses and introduce rebutting testimony. When the evidence is presented the accused should retire from the room. The assembly may then deliberate upon the matter and take a vote upon the question of expulsion, or such other punishment as is thought best. A two-thirds vote is necessary to expel a member. This is the rule of congress. Some assemblies, of an ecclesiastical nature, like church tribunals, often settle important property rights in the above manner, and their decisions are followed and enforced by the civil courts.

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CHAPTER III.

GLOSSARY OF LAW TERMS.

Abandonment. The relinquishment or surrender of rights or property by one person to another. In insurance by "abandonment" is meant the transferring of the property of the insured, or what is left of it, to the insurers.

Abate. A reduction made by the creditor for the prompt payment of a debt due by the payer or debtor. The removal of a nuisance.

Abduction. Forcibly taking away a man's wife, or his child.

Abet. To encourage or set another on to commit a crime.

Abscond. To go in a clandestine manner out of the jurisdiction of the court.

Acceptance. The receipt of a thing offered by another with an intention to retain it, indicated by some act sufficient for the purpose. An assent and engagement to pay a bill of exchange when due. See page 285.

Accessary. One who is not the chief actor in the perpetration of the offence nor present at the performance, but is in some way concerned therein, either before or after the fact committed.

Accession. The right to all which one's own property produces, and the right to that which is united to it either naturally or artificially.

Accommodation Paper. Promissory notes or bills of exchange, made, accepted, or indorsed, without any consideration therefor.

Accord. A satisfaction agreed upon between the party injuring and the party injured, which, when performed, is a bar to all actions upon this account.

Accretion. The increase of real estate by the addition of portions of soil by gradual deposition through the operation of natural causes to that already in possession of the owner. See Chapter III., on page 19.

Accrue. To grow; to be added to as the interest or profit, added to the principal.

Acknowledgment. The act of one who has executed a deed in going before some competent officer or court and declaring it to be his act and deed. See page 282.

Act of God. An accident arising from some cause which operates without the influence or aid of man, as the winds, waves, lightnings, etc.

Action. A formal demand of one's right from another person or party made and insisted on in a court of justice.

Ad litem. For the suit. Guardian ad litem is a guardian appointed to attend to a suit against a minor.

Administrator. A person authorized to manage and distribute the estate of an intestate, or of a testator who has no executor. See page 272, 277.

Admiralty. A court having a very extensive jurisdiction of marine causes, civil and criminal.

Adultery. The voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

Advancement. A gift by anticipation from a parent to a child of a whole or a part of what is supposed such child would inherit on the death of the parent. See Chapter XXXIII., page 259.

Adverse Possession. The enjoyment of land under such circumstances as indicate that such enjoyment has been commenced and continued under an assertion or color of right on the part of the possessor.

Affidavit. A statement or declaration reduced to writing and sworn or affirmed to before some officer who has authority to administer an oath.

Affinity. The connection existing, in consequence of marriage, between each of the married persons and the kindred of the other. It is distinguished from consanguinity, which denotes relationship by blood. See page 281.

Affirm. To make affirmation; to make a solemn promise, before an authorized magistrate or tribunal, by persons who conscientiously decline taking an oath; which declaration is in law equivalent to an oath.

A Fortiori. By the weightier reason.

Agency. A relation between two or more persons by which one party, usually called the agent or attorney, is authorized to do certain acts for or in relation to the rights or property of the other, who is called the principal.

Agent. One who undertakes to transact some business or to manage some affair for another by the authority and on account of the latter, and to render an account of it.

Alias. A second or further writ; another name; an assumed name.

Alibi. Presence in another place than that described. Being in another place at the time of the commission of the crime.

Alien. A foreigner; one of foreign birth and unnaturalized.

Alimony. The allowance which a husband, by order of court, pays to his wife living separate from him for her maintenance.

Allegiance. The tie which binds the citizen to the government in return for the protection which the government affords him.

Ambiguity. Duplicity, indistinctness, or uncertainty of meaning of an expression used in a written instrument.

A mensa et thoro. From bed and board; a limited divorce.

Ambassador. One sent abroad by the government to represent it at the court of another nation. A public minister. Public ministers are of different ranks: 1. Ambassadors; 2. Ministers Plenipotentiary, and Envoys Extraordinary; 3. Ministers resident; 4. Charges des affaires; 5. Commercial agents or consuls. We have no ambassadors in America.

Ancestor. One who has preceded another in a direct line of descent.

Ancillary. Auxiliary, subordinate; used of an administration taken out in the place where assets are situated, which is subordinate to the principal administration.

Animus. The intention with which an act is done.

Annuity. A yearly sum stipulated to be paid another in fee, or for life, or years, and chargeable only on the person of the grantor.

Anonymous. Without name.

Ante-Nuptial. Before marriage; with a view to entering into marriage.

A priori. From the former.

Appeal. The removal of a cause from a court of inferior to one of superior jurisdiction for the purpose of obtaining a review and retrial.

Appraisement. A just valuation of property.

Appraiser. A person appointed by competent authority to appraise or value goods or real estate.

Apprentice. A person bound in due form of law to a master to learn from him his art, trade, or business, and to serve him during the term of his apprenticeship. See page 183.

Appurtenances. Things belonging to another thing as principal, and which pass as incident to the principal thing.

Arraign. To call a prisoner to the bar of the court to answer the matter charged in the indictment.

Arrears. The remainder of an account, or sum of money in the hands of an accountant. Any money due and unpaid at a given time.

Arrest. To deprive a person of his liberty by legal authority.

Arrest of Judgment. The staying or stopping of a judgment after verdict for legal cause. The motion for this purpose is called a motion in *arrest* of judgment.

Arson. The malicious burning of a dwelling-house of another person.

Articles. The distinct portions of a document in writing; as Articles of Agreement, an account consisting of many articles.

Assault. An attempt or offer to beat another, accompanied by a degree of violence, but without touching his person, as by lifting the fist, or a cane in a violent manner, or by striking at him and missing him. If the blow aimed takes effect it is a battery.

Assign. To transfer or make over to another. To transfer to, and vest in, certain persons called assignees, for the benefit of creditors.

Assumpsit. He undertook (promised).

Attachment. A seizure, or taking by virtue of a legal process.

Attorney. One put in the place or stead of another to manage his affairs. *Attorney in fact:* A person to whom the authority of another who is called the constituent, to transact any business for him out of court. *Attorney at-law:* An officer in a court of justice who is employed by a party in a cause to manage the same for him.

A vinculo matrimonii. From the bonds of matrimony.

Award. The judgment or decision of arbitrators or referees on a matter submitted to them. See Chapter XXXII, page 254.

Bail. To set free, on giving security for appearance at a certain day and place.

Bailment. A delivery of something of a personal nature by one party to another to be held according to the purpose or object of the delivery, and to be returned or delivered over when that purpose is accomplished.

Bail-peace. A slip of parchment, or paper, containing a recognition of bail *above*, or *bail to the action*.

Bankrupt. A trader who breaks or fails, or becomes unable to pay his debts in the ordinary course of trade; an insolvent trader. In strictness no person but a trader can be a bankrupt. *Bankruptcy* is applied to merchants and traders, *insolvency* to other persons.

Bankrupt Law. A law which upon a bankrupt's surrendering all his property to commissioners for the benefit of his creditors, discharges him from the payment of his debts, and all liability to arrest or suit for the same, and secures his future acquired property from a liability to the payment of his past debts.

Bans of Matrimony. Notice of a marriage proposed, or of a matrimonial contract, proclaimed in a church, or other place prescribed by law, that any person may object, if he knows of any kindred between the parties, of any pre-contract, or other just cause why the marriage should not take place.

Bar. 1. The whole body of lawyers licensed in a court; the legal profession. 2. A special plea, constituting a sufficient answer to the plaintiff's action. 3. The railing that incloses the place which counsel occupy in courts of justice. Hence the phrase, at the *bar of the court*, signifies in open court. 4. The place in court where prisoners are stationed for arraignment, trial or sentence.

Barrister. A counsellor learned in the laws, qualified and admitted to plead at the bar.

Barter. A contract by which parties exchange goods for goods.

Battery. The unlawful beating of another. It includes every angry and violent touching of another's person or clothes, or anything attached to his person or held by him. Spitting in one's face may be a battery. It is distinguished from an assault, inasmuch as

the latter does not necessarily imply a hitting or a blow. There may be an assault without battery, but there can not be a battery without an assault.

Bequeath. To give by will; applied to personal property. *Devised* is applied to a gift by will of real estate. See Chapter on Wills, page 268.

Bigamy. The offense of contracting a second marriage during the life of the first husband or wife.

Bill. A declaration in writing, to an equity court, expressing some wrong the complainant has suffered from the defendant.

Bill of Costs. A statement of the items which form the total amount of the costs of a party to a suit or action.

Bill of Credit. Among merchants it is a letter sent by an agent or other person to a merchant desiring him to give credit to the bearer for goods or money.

Bill of Entry. A written account of goods entered at the Custom House, whether imported or intended for exportation.

Bill of Exchange. A written order or request from one person to another, desiring the latter to pay to some person designated a certain sum of money therein named.

Bill of Lading. A written account of goods shipped by any person on board of a vessel, signed by the master, who acknowledges the receipt of the goods, and promises to deliver them safe at the place directed, damages of the sea excepted. A similar instrument made by a carrier by land.

Bill of Sale. A formal instrument for the conveyance or transfer of goods and chattels.

Blasphemy. In law, any false statement or language intended as a reviling of God.

Blockade. In International law, the right to blockade the ports of an enemy in war, and to exclude neutral vessels. To stop all vessels from entering or leaving a port.

Bona Fide. In good faith, honest.

Bond. A writing under seal by which a person binds himself, his heirs, executors, and administrators, to pay a certain sum, or perform some act.

Bonus. A premium paid to a grantor or seller.

Bottomry. A contract by which the owner of a ship, or the master as his agent, binds the ship as security for the payment of money advanced for the use of the ship.

Bounty. A premium offered to induce men to enlist into the public service.

Breach. A breaking, or infraction, as of a law, or any obligation; non-fulfilment of a contract; a breach of promise of marriage.

Burglary. The breaking and entering the dwelling-house of another in the night-time, with intent to commit a felony therein, whether the felonious purpose be accomplished or not. In American law the crime includes offenses committed by day as well as by night, and in other buildings than dwelling-houses; there are various degrees of the crime in several of the States.

By-Law. A private law made by a corporation for its own government; a law aside from the general or public law.

Capias. "You may take;" a writ of process commanding the officer to take the body of the person named in it; also called *Writ of Capias*.

Causa Mortis. On account of death.

Caveat. *Let him beware.* A notice given to an officer not to do a certain act until the party is heard in opposition. In patent laws, a description of some invention, designed to be patented, lodged in the office before the patent right is taken out, operating as a bar respecting the same invention from any other quarter.

Certiorari. A writ directing the proceedings or record of a cause to be brought before a superior court.

Chancellor. A judicial officer; the president, or chief judge of a court of chancery.

Chattel. Every kind of property except the freehold, or the things which are a parcel of it; it is a more extensive term than good or effects. Chattels are personal or real.

Check. An order for money, drawn on a banker or bank, payable on sight.

Chose in action. A personal right to a thing not reduced to possession, but recoverable by suit at law.

Chose in Possession. A thing in possession, as distinguished from a thing in action.

Civil Death. In law, that which cuts off a man from civil society, or its rights and benefits, as banishments, outlawry, etc.

Civil Law. In a general sense, the law of a State, city or country.

Clearance. A certificate that a vessel has been cleared at the Custom House; permission to sail.

Code. An orderly collection or digest of laws.

Codicil. A supplement to a will which in some way modifies the will without repealing it. See Chapter on Wills, page 269.

Collusion. An agreement between two or more persons to defraud a person of his rights by the forms of law.

Common Carrier. One who undertakes for hire to transport goods from one place to another. See chapter on carriers, page 226.

Common Law. The unwritten law, the law which receives its binding force from immemorial usage and universal reception. See page 3.

Competency. Legal capacity or qualifications; fitness; as the competence of a witness.

Compos Mentis. "Of sound mind."

Compounding a Felony. To accept a consideration for forbearing to prosecute.

Condonation. Forgiveness, either expressed or implied, by a husband or wife, for a breach of marital duty, with an implied condition that the offense shall not be repeated.

Confidential Communication. One made by a client to his counsel, solicitor, or attorney, or *vice versa*, in professional confidence, and which he is not permitted to divulge, and cannot be required to divulge.

Confiscate. To appropriate property as a penalty to the public use.

Consanguinity. Kindred by blood and birth between persons descended from the same stock or common ancestry.

Consideration. The material cause of a bargain without which it is not binding on either party. See page 7.

Consignee. The person to whom goods or other things are shipped.

Consignment. The sending or delivering over of goods to another person for sale.

Contempt. In law, disobedience of the rules, orders, or process of a court of justice, or of the rules of a legislative body.

Contingent. Dependent for effect on something that may or may not occur; as, a contingent estate; contingent use.

Continuance. The postponement of the proceedings in a cause from one stated term of a court to another.

Contract. See page 5.

Contribution. Two or more persons being jointly liable for a debt, and one should pay more than his share, he may demand that the others contribute their shares respectively.

Conveyance. An instrument in writing by which property, or the title to property, is conveyed or transmitted from one person to another.

Conveyancer. One whose business it is to draw and prepare the necessary paper for conveying property.

Convict. A person found guilty, after trial, of a crime alleged against him.

Coparcenary. Partnership in inheritance; joint heirship; joint right of succession to an estate of inheritance.

Copyright. The legal right which an author has in his own original production; the exclusive right to print, publish, and sell his own literary, scientific, or artistic productions, for his own benefit, during a certain period.

Counsel. One who gives advice in legal matters; also, collectively the legal advocates united in the management of a case.

Court. 1. The hall, chamber, or place where justice is administered. 2. The persons officially assembled under authority of law for the administration of justice. 3. A judge or judges sitting for the hearing or trial of causes.

Covenant. A mutual agreement of two or more persons or parties, in writing and under seal, to do or to refrain from some act or thing; a contract.

Covert. Married.

Crime. Any violation of law punishable in the name of the people, or which the State or Government will take notice of and punish.

Crim. Con. Criminal conversation; illicit connection.

Custom. Such a usage as by common consent and uniform practice has become the law of the place.

Damages. The indemnity recoverable by a person who has sustained injury, either in person, property, or rights, through the act or default of another.

Days of Grace. Certain days allowed to the acceptor of a bill or the maker of a note in which to make payment, in addition to the time contracted for by the bill or note itself. See page 285.

Declaration. The paper, filed in an action at law, which

states the facts and circumstances upon which the plaintiff bases his claim.

Dedication. Giving land to the public for some public use.

De Facto. Actually; in fact.

Decree. The judgment or sentence of a court of equity.

Deed. A written instrument under seal containing a contract or agreement, which has been delivered by the party to be bound and accepted by the obligee. See Chapter on Deeds, page 37.

Default. The non-performance of a duty.

Defeasance. An instrument which defeats the force or operation of some other deed or estate.

Defense. A forcible resistance of an attack by force. The denial of the truth or validity of a complaint.

Defendant. A party sued in a personal action.

De jure. From the law; by the law.

Demise. A conveyance, either in fee, for life, or for years.

Demurrer. An allegation that, admitting the facts of the preceding pleading to be true as stated by the party making it, he has yet shown no cause why the party demurring should be compelled by the court to proceed further.

De novo. Anew; afresh.

Deponent. One who makes a deposition under oath; who gives written testimony to be used as evidence in a court of justice; affiant.

Deposition. Testimony taken down in writing before some competent authority, and in reply to interrogatories and cross-interrogatories. See page 282.

Derelict. A thing voluntarily abandoned or utterly forsaken by its proper owner. A tract of land left dry by the sea, and fit for cultivation. A ship deserted by its crew.

Dernier resort. The last resort.

Descent. Hereditary succession to an estate. The ordinary succession from parents. See Chapter XXXIII, page 256.

Detainer. Keeping possession of that which belongs to another.

Deviation. The voluntary departure of a ship, without necessity, from the regular course of the voyage insured, thus releasing the insurers from their responsibilities.

Disable. To deprive of legal right or qualification; to render legally incapable.

Disbar. To expel from the bar.

Dispossession. Deprivation of possession of property, by some process of law, and an order from the court.

Disseizee. A person disseized, or put out of possession of an estate unlawfully.

Dissolve. To annul; to rescind; as to dissolve an injunction.

Distress. The act of distraining; taking possession of personal chattels, without process of law, from one who does not pay rent; that which is taken by distraining to procure satisfaction. See page 248.

Divorce. A dissolution of the marriage contract by a court or other body having competent authority. This is properly a divorce, and called technically, divorce *a vinculo matrimonii*—from the bands of matrimony. The separation of a married woman from the bed and board of her husband—*a mensa et thoro*—from bed and board.

Domain. 1. Ownership of land; 2. Absolute proprietorship; 3. An estate or patrimony which one has in his own right; 4. *Public Domain*, the territory belonging to a State or to the general government; public lands. 5. *Right of Eminent Domain*. Right which the State has to take private property for the public use.

Domicile. A permanent home and principal establishment where one always returns after absence.

Dominant Estate. The tenement or estate to which a servitude or easement is due from another estate, the estate over which the servitude extends being called the servient estate. See page 88.

Dormant Partner. A partner who takes no share in the active business of a company or partnership, but is entitled to a share of the profits, and subject to a share in losses;—called also *silent partner*.

Dower. 1. The property with which a woman is endowed; especially that which a woman brings to a husband in marriage. 2. That portion of the real estate of a man which his widow enjoys during her life, or to which a woman is entitled after the death of her husband. See page 258.

Due-bill. A brief written acknowledgment of a debt.

Duress. The state of compulsion in which a person is induced by the unlawful restraint of his liberty, or threatened violence, to make a deed or contract, or to discharge one, or to commit an offense.

Earnest. Money advanced as a pledge to bind the parties to the performance of a bargain.

Easement. A liberty, privilege, or advantage without profit, which one proprietor has in the estate of another proprietor, distinct from the ownership of the soil, as, a way through his lands, water-course, etc. See Chapter XI.

Embezzlement. The fraudulent appropriation of anything that has been entrusted to one's care and management.

Emblement. The right to the produce or fruits of land sown or planted. See page 15.

Eminent Domain. (See Domain.)

Enceinte. Pregnant, with child.

Encumbrance. Every right to, or interest in, an estate to the diminution of its value, as a mortgage, a lien for taxes, a judgment, etc.

Entail. An estate entailed, or limited in descent to a particular heir or heirs.

Enter. To go into or upon lands, and take actual possession of them.

Equity. A system of jurisprudence administered in Courts of Equity, supplemental to law, the object of which is to supply the deficiencies of the courts of law, and render the administration of justice more complete.

Equity of Redemption. The advantage allowed to a mortgagor of a certain time to redeem lands mortgaged, after they have been forfeited at law by the non-payment of the sum of money due to the mortgagee at the appointed time. See Chapter VI.

Error. A mistake in the proceedings of a court of record in matters of law or of fact.

Escheat. The falling or reverting of real property to the State.

Escrow. A deed or bond delivered to a third person, to hold till some act is done or some condition is performed, and which is not to take effect until then.

Estate. The interest which any one has in lands, tenements, or other effects; as an estate for life, for years, at will, etc. See page 12.

Estoppel. The stopping one's setting up a fact or denying one, where his previous conduct has implied the contrary. See page 20.

Eviction. Dispossessing a person of lands or tenements by due process of law.

Evidence. That which is legally submitted to a competent tribunal, as a means of ascertaining the truth of any alleged matter of fact under investigation before it.

Exception. An objection taken in the course of a trial, or as to the decision of a judge in the course of a trial, or in his charge to a jury.

Excise. The taxes or duties levied on commodities consumed at home; distinct from customs, which are duties levied on imports and exports.

Execution. A judicial process for obtaining possession of anything recovered by judgment of law; execution of a will or deed.

Executor, Executrix. One appointed by a person's last will to manage his estate and execute his will. See chapter on wills, page 264.

Exemption. Free from that which binds others in respect to duty, taxes; exempt from service on jury, military service, etc.

Ex officio. Officially; by virtue of the office.

Ex parte. A statement is called *Ex parte* where only one of the parties gives an account of a transaction in which two or more are concerned.

Ex post facto. Something done after another thing committed before, or where a law is made to meet a particular offense committed previously. Ex post facto laws are prohibited by the U. S. constitution.

Extempore. Off-hand; without delay or premeditation.

Extortion. The unlawful taking, by a public officer, under pretense of his office, of any money or other gift, when none is legally due.

Extradition. An international law, the delivering up of a party charged with crime, a fugitive from justice, to the foreign government to which he belongs.

Fac-simile. Do the same; a close imitation.

False Imprisonment. The deprivation of a man's liberty in an unlawful manner.

Fee. An estate of inheritance.

Fee-simple. When the estate is free and unconditional. An

estate of inheritance. This is the completest ownership which a man can have in lands.

Fee-tail. When the estate is limited to certain heirs according to the will of the first donor.

Felo de se. A self-murderer; a suicide.

Felony. A heinous crime; including generally, all crimes for which the punishment is hanging or imprisonment in the State prison.

Feme Covert. A married woman, under covert or protection of her husband and not liable to action.

Feme Sole. A single or unmarried woman.

Fiat. *Let it be done.* A short order or warrant of some judge for making out and allowing certain processes.

Fiction. In law, a supposition that a thing is true, so that it may have the effect of truth as far as is consistent with equity.

Fiduciary. One who holds property or other goods in trust for another; a trustee.

Fieri Facias. That you cause to be made; a writ of execution.

Finding. The result of a judicial examination or inquiry, especially into some matter of fact; that which is found by a jury; a verdict.

Fine. A penalty for an offense committed.

Fixture. Personal chattels attached or affixed to real property. See Chapter VIII.

Flaw. Any error or omission in indictments, or declarations, which invalidates the proceedings.

Forcible Entry and Detainer. The entering upon and taking and withholding of land and tenements by actual force and violence, and with a strong hand, to the hindrance of the person having the right to enter.

Foreclosure. The act or process of foreclosing, or depriving a mortgagor of the right of redeeming a mortgaged estate, or, as it is said, cutting him off from his equity of redemption. See Chapter VI, Sec. 16.

Foreign Bill. A bill drawn in one country or State, and payable in another.

Forfeiture. The losing of some right or property as a penalty for some misdeed or negligence.

Forgery. The fraudulent making or alteration of any record, deed, or writing, to the prejudice of another man's right, particu-

larly counterfeiting the signature of another with intent to defraud; the making of a thing in imitation of another thing.

Forum. A court; a place of justice.

Franchise. A particular privilege conferred by grant from a sovereign or a government, and vested in individuals.

Fraud. An act or instrumentality by which unfair or unlawful advantage is sought to be gained deceitfully. Using fraud in making contracts; a fraudulent bargain. Fraud vitiates everything.

Freehold. Land and tenements held in fee-simple, fee-tail, or for life.

Fugitive. One who has fled or deserted, and taken refuge under another power, or one who has fled from punishment.

Fugitive from Justice. One who, having committed a crime in one jurisdiction, flees or escapes into another to avoid punishment.

Garnishee. One in whose hands the property of another has been attached, in a suit against the latter by a third person; and who is garnisheed or warned of the proceedings, and has notice of what is required of him in reference to it.

Garnishment. Warning, or legal notice to one to appear and give information to the court on any matter.

Gift. A voluntary transfer of real or personal property, from one to another, without any consideration. It can be perfected only by deed in case of real property, or by an actual delivery of possession in case of personal property.

Good-will. The custom of any trade or business; the tendency or inclination of persons, old customers, and others to resort to an old established place of business; the advantage accruing from such tendency or inclination.

Grant. A transfer of property by deed or writing; especially an appropriation or conveyance made by the government; as a grant of land.

Gratis. Without reward or consideration.

Guardian. One who lawfully has the care and custody of the person, or estate, of another.

Guardian ad litem. A guardian appointed simply to attend to a suit for a minor or other person.

Guaranty. 1. To undertake or engage that another person shall perform what he has stipulated; 2. To undertake to be

answerable for the debt or default of another; 3. To engage to answer for the performance of some promise or duty by another in case of a failure by the latter to perform.

Habeas Corpus. *You may have the body.* A writ having for its object to bring a party before a court or judge; especially, one to inquire into the cause of a person's imprisonment or detention by another, with the view to protect the right of personal liberty.

Habendum. *To have.* One of the principal parts of a deed, so called because it begins with this word, signifying *to have*. See chapter on deeds, page 38.

Habitual Drunkard. One so given to the use of intoxicating drink that he has lost the power of controlling his appetite for it. (18 Pa. St., 172.)

Half-blood. The relationship existing between persons who have but one common parent. A man's two sons by different wives are brothers of the half blood. At common law they never inherit from each other. By the statutes of many of the States they do.

Hearsay Evidence. The testimony that a witness may give upon what he may have heard, but of which he has no personal knowledge.

Heir. One who receives, inherits, or succeeds to the ownership of any real property after the death of its owner.

Heir Apparent. One whose right to an estate is indefeasible if he survives the ancestor, in distinction from *Presumptive Heir*.

Heir at Law. One who after his ancestor's death has a right to inherit his estate.

Heir by Devise. One who has no other right or interest in the lands devised to him by will than the will of the testator gives him.

Heir Presumptive. One who, if the ancestor should die immediately, would be his heir, but whose right to the inheritance may be defeated by the birth of a nearer relative, or by some other contingency.

Heiress. The female heir to a man having an estate of inheritance in lands; and where there are several joint heirs they are called *Co-Heirs* or *Co-Heiresses*.

Heirloom. A chattel which, contrary to the general rule regarding chattels, descends to the heir instead of going to the administrator. See page 10.

Hereditament. All the property that may be inherited or come to the heir; lands, tenements, all movable things, whether corporeal or incorporeal, which go to the heir.

Highway. A public or free street, road, or way by land or water, open to all.

Homicide. The killing of any human being by the act of man, of which there are three kinds: *Justifiable*, if caused by unavoidable necessity; *excusable*, if it happened by misadventure; and *felonious*, if done without excuse.

Homestead. A person's dwelling-place, with that part of his landed property which is about and contiguous to it.

Hush Money. A bribe to secure silence; money paid to a person not to reveal information or disclose facts.

Householder. The head of a family living with him in the same house.

Housekeeper. One who occupies a house. He must occupy the whole of it. If he has simply a suite of rooms he is not a housekeeper.

Hue and Cry. A pursuit of one who has committed felony.

Husband. A man who has a wife.

Hypothecate. To confer on a creditor a right in or to a thing, by which the creditor obtains the power to cause that thing to be sold for the discharge of a debt or engagement out of the proceeds; to subject, as property, to liability for a debt or engagement without delivery of possession; to mortgage, as ships or other personal property.

Idiot. One who has no understanding or intelligence from his birth, and therefore is presumed by law never likely to attain any. The law declares that a man is not an idiot if he has any glimmer of reason, so that he can tell his parents, his age, or such common matters; but a man who is born deaf, dumb, and blind is looked upon by the law in the same light as an idiot.

Ignoramus. "We are ignorant"—written on a bill of indictment by a grand jury, when the evidence is not sufficient to put the person on trial.

Illicit. Not allowed or permitted by law; as an illicit trade; an unlawful and mischievous transaction.

Illegitimate. Contrary to law. Usually applied to children born out of wedlock. See page 259.

Illusion. A species of insanity.

Imbecility. A species of insanity, usually congenital or existing from birth.

Immemorial. "Time whereof the memory of men runneth not to the contrary." Applied to the possession of land, etc.

Impanel. The writing down of the names of a jury; to complete, or enroll, as a list of jurors in a court.

Impeach. To charge with a crime or misdemeanor; to accuse; especially to charge an officer with misbehavior in office; to cite before a tribunal for judgment of official misconduct; to impeach a judge, etc.

Impeachment. The act of impeaching. The accusation of a person for crimes and misdemeanors, and impropriety of official conduct. A written accusation by the House of Representatives to the Senate of the United States.

Impose. To lay as a charge; obligation, tax, duty; to enjoin; to impose, as a tribute.

Imports. Duties or taxes laid, on goods imported into a country, by the government.

Imprisonment. The act of imprisoning; confinement in a prison; deprived of liberty. *False imprisonment* is confinement of the person, or restraint of liberty, without legal or sufficient authority.

Improvement. In Patent laws, the term applied when an addition of some useful thing to a machine, manufacture, or composition of matter is made.

Incapable. Unqualified in a legal sense; not having the constitutional qualifications.

Incendiary. Any person who sets fire to a building.

Incident. Something appertaining to, and depending on another, called the *principal*.

Incompetency. Want of legal fitness to be heard or admitted as a witness, or to act as a juror, in the trial of a cause.

Incorporeal. Existing only in contemplation of law; not capable of actual visible possession. *Incorporeal Hereditament*, a right issuing out of a thing corporeal. Something that is inheritable, but is not visible, like a right of way or other easement.

Incumbrance. A burden or charge upon property; a legal claim or lien upon an estate.

Indemnity. Exemption from damages or loss; security to save harmless. *Act of Indemnity*, a law passed in order to relieve per-

sons from some penalty to which they are liable in consequence of acting illegally, or in consequence of exceeding the limits of their strict constitutional powers.

Indenture. An agreement or contract made between two or more persons; so called because originally the papers or parchments were indented or cut scalloped, so as to correspond with another writing containing the same words.

Indicia. Discriminating signs; marks; badges; tokens; indications.

Indictment. A written accusation and formal charge of a crime preferred to a court by a grand jury.

Indorse. To write one's name upon the back of a paper, for the purpose of transferring it, or to secure the payment of a sum of money; to guarantee the fulfilment or performance of an obligation.

Inducement. Any matter stated by way of explanation, preamble, or introduction to the main allegations of a pleading.

In esse. In being.

In extremis. In the last moments; near death.

Infamy. The loss of character, or public disgrace, which a convict incurs, and by which a person is at common law rendered incompetent as a witness.

Infancy. The state or condition of one under age; or under the age of twenty-one years; nonage; minority.

Infringement. In Patent law, the act of violating the right of another; the unlawful interference with a patent or copyright.

Inherit. To take as heir at the death of the ancestor.

Inheritance. A perpetual right to an estate in a man and his heirs; an estate which a man has by descent as heir to another; an estate derived in due course of law.

Injunction. A writ granted by a court of equity, and, in some cases, under statutes, by a court of law, whereby a party is required to refrain from certain acts.

In propria persona. In his own person.

Inquest. An examination under authority of a court; an inquiry into any matter, civil or criminal, by a jury. The grand jury is often called the grand inquest.

Inquiry. Seeking for information; examining into facts. *Writ of Inquiry* is an instrument in writing issued in certain

actions at law, where the defendant has suffered judgment to pass against him by default.

Insanity. This is very hard to define. It is a dethronement of the reason. A departure from the states of feeling and modes of thinking usual to persons in health. See Chapter on Wills.

Insolvent. One who can not pay his debts; a condition of bankruptcy.

Insolvent Law. A law affording relief to insolvent debtors.

Insurance or Assurance. A contract between parties, for a stipulated premium, to make good any loss which another may sustain by fire, shipwreck, or other cause specified in the policy of insurance.

Interdict. An order of a court prohibiting some act, having the like purpose and effect with a Writ of Injunction.

Interlocutory Order. An order which does not decide the cause itself, only some intervening matter relating to it.

International Law. The law that pertains to the friendly relations between nations. It is founded upon moral right. Civilized nations acknowledge it to be binding upon them.

Inter nos. Between ourselves.

Interregnum. A space between two reigns.

In terrorem. By way of warning.

In transitu. On the passage.

Interest. The right which a man has in a thing. The price which is paid for the use of money. For lawful rates of interest the different States see pages 60-61.

Intervention. The act by which a third person, to protect his own interest, interposes and becomes a party to a suit pending between other parties.

Intestate. A person who dies without making a valid will. Not devised or bequeathed.

Inventory. A schedule of all the goods and chattels, and sometimes the real estate of a deceased person.

Investiture. The action of investing; giving possession. The grant of land or a feud was perfected by the ceremony or corporeal investiture, or open delivery of possession.

Invoice. In commercial law, a written account of goods sent by a merchant to a purchaser, with the value and charges appended.

Ipsa Jure. By the law itself.

Issue. The children begotten between a man and his wife.

In pleading, an issue is a material point affirmed by one party and denied by the other.

Jeopardy. Peril or danger.

Jettison or Jetsam. The throwing out of a vessel, from necessity, of a part of the cargo. The thing thrown out.

Jointure. A settlement of lands and tenements made over by the husband to the wife, to be enjoyed after his decease.

Judgment. The decision of the court pronounced by the judge as the final result of proceedings before him. An interlocutory judgment is one given in the middle of the cause, as distinguished from a final judgment or one that puts an end to the action.

Judicature. The power of distributing justice by legal trial and determination. A court of justice. Extent of jurisdiction of a judge or court.

Judiciary. That branch of government in which judicial power is vested.

Jurisdiction. The legal power or authority invested in any individual or court, of doing justice in the causes brought before them. The territory within which the court acts.

Jurisprudence. The science of law; a knowledge of the laws, or skill in interpreting and applying them; also the laws themselves.

Jury. A body of men, selected according to law, and sworn to inquire into and try any matter of fact, and to declare the truth of it on the evidence presented.

Jury of Inquest. Commonly called a Coroner's Jury. Summoned in cases of sudden or violent death, to try into the cause.

Jure gentium. By the law of nations.

Justifiable Homicide. The intentional killing of a human being, but under such circumstances as the law holds sufficient to excuse the person who commits it.

Justification. The showing of a sufficiently good reason in a court why one has done the thing for which he is called to answer.

Kidnapping. The forcible abduction of a person from his own country. It is not now essential that he be carried out of the country. (8 N. H., 550.)

Kindred. Blood relations.

Laches. Neglect to do a thing at the proper time. Negligence from which damages may arise.

Landing Charges. Fees paid on goods unloaded from a vessel.

Landlord and Tenant. See Chapter XXX., page 244.

Land. Ground, soil, earth. See page 9, Sec. 2.

Lapsed Devise, or Legacy. A devise or legacy which fails or takes no effect, in consequence of the death of the devisee before that of the testator, or for other cause.

Larceny. The felonious and fraudulent taking away the personal goods of another. Grand and Petit Larceny are distinctions depending on the nature and value of the property taken.

Law Merchant. The body of rules and usages in force in matters of commerce.

Law of Nations. Same as international law.

Lease. A letting of lands or tenements to another for a term of years, or at will, for a rent or other compensation. See Chapter XXX.

Leasehold. Lands or tenements held by virtue of a lease, or conveyance, from the party having a right so to dispose of them.

Legacy. A bequest or gift by will of any personal effects; the person bequeathing is called the *testator*, and the person to whom it is bequeathed the *legatee*.

Legal Tender. Money which the law makes legal.

Legitimate. Lawfully begotten or born; born in wedlock; as, legitimate heirs or children. In accordance with established law.

Letter of Advice. A letter written by a merchant to his correspondent advising or giving him notice of what bills he has drawn upon him.

Letter of Attorney. A writing whereby a person constitutes another to do a lawful act in his stead, as to receive debts, etc.

Letters of License. An instrument or writing granted by a person's creditors, allowing him a certain time for the payment of his debts, by which means he is enabled to prosecute his business without legal molestation.

Letter of Credit. A letter from one merchant or banker to another, in another country, directing the latter to give credit to the bearer, for which the former becomes responsible.

Letters of Marque and Reprisal. A commission granted by a government to an individual to take the property of a foreign

State, or of its subjects, as a reparation for some injury committed by such State.

Letters Testamentary. An instrument granted by the Judge of Probate to an executor after probate of a will, authorizing him to act as executor.

Levari Facias. That you cause to be levied; a writ of execution.

Levy. The taking or seizure of property on executions to satisfy judgments, or on warrants for the collection of taxes.

Lex Loci. The law of the place.

Lex Talionis. The law of retaliation in kind.

Libel. A written and published false statement calculated to injure another by bringing him into ridicule or contempt.

Lien. A legal claim; a charge upon real or personal property for the satisfaction of some debt or duty; the right which a creditor has to retain the property of his debtor, until the debt has been paid.

Life Estates. Estates not of inheritance, but simply during the life of the possessor.

Limitation. A certain period limited by statute after which the claimant shall not enforce his claims by suit. It is generally six years for personal actions and 20 years for real actions.

Loan. A bailment without reward.

Loco Parentis. In the place of the parent.

L. S., Locus Sigilli. The place of the seal.

Lode. A metallic vein, or any regular vein or course.

Lynch Law. The practice of punishing men for crimes by private, unauthorized persons, without a legal trial. This term is derived from a Virginia farmer, named *Lynch*, who thus took the law of punishing offenders into his own hands.

Maim, or Mayhem. A corporal wound or hurt, by which a man loses the use of a limb or member of the body; deprivation of something essential.

Mainprise. The surrendering a person into friendly custody, upon giving security that he shall be forthcoming at the time and place required.

Maintenance. In Criminal law, an officious intermeddling between others, by assisting either party with money or means to prosecute or defend.

Majority. Being of age, *i. e.*, twenty-one years or more.

Malfesance. The doing of some act which a person ought not to do.

Malicious. With wicked or mischievous intentions or motives.

Malum in se. Bad in itself; an evil in its own nature.

Mandamus. "We command." A writ issued by a superior court and directed to some inferior tribunal, or to some corporation or person exercising public authority, commanding the performance of some specified duty.

Mania. A kind of insanity.

Manifest. A list or invoice of a ship's cargo, containing a description by marks, numbers, etc., of each package of goods, to be exhibited at the Custom House.

Manslaughter. The unlawful killing of a man without malice, express or implied.

Manumission. Making a slave free.

Mayor. The chief executive magistrate of a city.

Maxim. A principle of law universally admitted.

Mesne Process. An intermediate process, issuing pending the suit, upon some collateral matter; also, all such processes as intervene between the beginning and end of a suit.

Messuage. A dwelling-house with its adjoining land, appropriated to the use of a household.

Misdemeanor. An offense less than a felony. Crimes and Misdemeanors are synonymous terms, though, in common usage, the word crime is made to denote such offenses as are of a more atrocious kind; while smaller faults and omissions of less consequence are comprised under the name of Misdemeanors.

Misfeasance. The improper doing of an act which a person might lawfully do.

Mitigation of Punishment. Remitting the severity of sentence.

Moiety. One-half, or one of two equal parts; as a Moiety of an estate, of goods, or of profits.

Mortgage. A conveyance of property, upon condition, as security for the payment of a debt or the performance of a duty, and to become void upon payment or performance. See Chapter VI.

Motion. In law, an application in court either by the parties themselves or their counsel, in order to obtain some order or rule of court.

Movables. Property not fixed or real; personal chattels; goods that may be moved from place to place.

Municipal. Pertaining to city.

Municipal Law. The law of a nation or State as distinguished from international law. See page 1.

Murder. The act of willfully and feloniously killing a human being with malice prepense.

Mutatis Mutandis. Changing what ought to be changed.

Mutiny. A revolting from lawful authority, particularly among sailors and soldiers; to rise against one's superior officer.

Navigable. Capable of being navigated. See page 82.

Naturalization. The act by which an alien is made a citizen of the United States.

Next of Kin. This term is used to signify the relations of a person who dies without a will.

Nisi Prius. *Unless before.* Applied to terms of court; held generally by a single judge, with a jury, for the trial of jury causes.

Nolle Prosequi. An entry made on the record by the plaintiff, or prosecuting attorney, that he will not further prosecute the suit.

Nole Contendre. A plea, by the defendant, in a criminal prosecution, equivalent to that of guilty, for all the purposes of that prosecution.

Non-age. An age less than twenty-one.

Non Compos Mentis. Not of sound mind, memory, or understanding.

Non est factum. The general issue in an action of debt on bond.

Non est inventus. The return of a sheriff on a writ, when the defendant is not found in his county.

Nonfeasance. An omission of what ought to be done.

Non pros. A judgment entered against the plaintiff in a suit where he does not appear to prosecute; a discontinuance of further proceedings in criminal cases.

Non-suit. The name of a judgment given against the plaintiff when he is unable to prove his case, or when he refuses or neglects to proceed to the trial of a cause after it has been put at issue.

Non-user. Neglect to make use of a thing.

Notary Public. A public officer who attests, or certifies,

deeds, and other writings, usually under his official seal, and to make them authentic in another country. His duties chiefly relate to instruments used in commercial transactions. See Chapter on Notaries, page 278.

Note of Hand. A popular name for a promissory note.

Nundum pactum. A contract not binding in law from want of consideration.

Nuncupative Will. An oral or verbal will made in expectation of death, before witnesses, and afterwards reduced to writing.

Nuisance. Any annoyance which tends to the hurt or inconvenience of another. See Chapter XX., on Nuisances, page 170.

Nulla Bona. The return made to a writ of execution by the sheriff when he can find no goods upon which to levy.

Nunc pro tunc. This means that a thing is done at one time which ought to have been done at another. Orders and judgments are sometimes entered *nunc pro tunc*.

Oath. A pledge given by the person taking it that his attestation or statement is made under an immediate sense of his responsibility to God. A solemn invocation to Deity.

Oath of Allegiance. The oath which the person takes when about to become a citizen of the United States.

Obligation. A bond containing a penalty on condition of not performing certain covenants annexed.

Onus Probandi. The burden of proof.

Ordeal. An ancient form of trial to determine guilt or innocence practiced by the rude nations of Europe, and still practiced in many parts of the East.

Ordinance. A statute or law; a rule established by authority. Usually applied to the laws of a city.

Ordinary. An officer who has original authority and powers in his own jurisdiction. A judicial officer having powers such as a surrogate or judge of probate.

Original Writ. The beginning or foundation of a suit; and is a mandatory order from the court or judge.

Overt Act. An open act, capable of being sustained by legal proof.

Oyer and Terminer. A commission directed to the judges and other gentlemen of the courts to which it is issued, by virtue whereof they have power to hear and determine treasons, felonies, etc.

Oyez. Hear ye. An expression with which crier opens court.

Pains and Penalties. In English law, an act of Parliament to inflict pains and penalties beyond or contrary to the common law, in the particular cases of great public offenders.

Pandects. An abridgment of Roman Law made by order of the Emperor Justinian in A. D. 533.

Par. Equal. "Worth 100 cents on the dollar." Stocks are at par when they sell for their nominal value.

Parcenary. Holding lands and tenements in copartnership by two or more persons. A joint tenancy or tenancy in common.

Pardon. An act of Grace. Freeing a prisoner from penalty.

Parliament. The legislative branch of the Government of Great Britain. It is composed of the House of Lords and House of Commons.

Parol. By word of mouth; an oral declaration; as Parol evidence.

Parol Contract. Any contract not of record or under seal, whether oral or written.

Parricide. One who murders his parent.

Particeps Criminis. A partaker in the guilt of another, not as a principal, but an accessory.

Parties. Persons. Those who take part in the performance of an act, parties to a contract, parties to a suit.

Partition. The division of lands, tenements, etc., among co-heirs or parceners.

Partnership. An association of two or more persons to carry on some branch of business in common; a firm or house. *Silent partnership*, one in which capital only is furnished by one or more partners, having no action, direction, or co-operation in the business.

Passport. A license or letter from one government to another granting liberty to a person to pass through a foreign country.

Patent. A privilege from the government granted by LETTERS PATENT, conveying to the individual or individuals therein specified, the sole right to make, use, or dispose of some new invention or discovery, for a certain specified time.

Patentee. One to whom a patent is granted.

Paternity. The state or condition of a father.

Patricide. One who kills his father.

Patroon. In N. Y. the lord of a manor.

Pauper. One so poor that he must be supported at public expense.

Payment. The fulfillment of a promise. The performance of an agreement.

Penal Code. A code of laws concerning the punishment of crimes.

Penalty. A fine or forfeiture by way of punishment. The law inflicts *Penalties*, sometimes pecuniary and sometimes personal. The non-fulfillment of a bond or other agreement subjects the party to the penalties therein expressed.

Per capita. By the head. A division equally among individuals.

Peremptory Challenge. A challenge or right of challenging jurors, without showing cause.

Perjury. The act of knowingly and willfully taking a false oath in a court of justice, by a witness lawfully required to depose the truth in a matter of some consequence to the point in question. A false oath, therefore, taken before no court, or before a court incompetent to try the issue in question, does not constitute the offense of perjury.

Per se. By itself.

Piracy. The act or crime of robbing on the high-seas; the taking of property from others by open violence, with intent to steal, and without lawful authority, on the sea.

Placer. A gravelly place where gold is found.

Plaintiff. The person who commences an action or suit at law.

Plea. That which is alleged by a party in support of his cause; the defendant's answer to the plaintiff's declaration.

Pleadings. The mutual altercations between the plaintiff and defendant, or written statements of the parties in support of their claims.

Pledge. Personal property delivered to, or deposited with, another as security for a debt or engagement. *Dead Pledge*, a mortgage. *Living Pledge*, the conveyance of an estate to another for money borrowed, to be held by him until payment out of the rents and profits.

Pluries. Very often a third writ after two have issued against a defendant.

Police. That branch of administrative justice which extends

to the prevention of crimes, by watching over public order, preventing breaches of the peace, removing nuisances, etc., of a city or incorporated town.

Policy of Insurance. The instrument by which a contract of indemnity is effected between the insurer and the insured; the writing containing the terms or conditions of a contract of insurance against loss by fire, at sea, or on life.

Poll. An old word signifying head. Thus a poll tax is a tax on each person.

Posse Comitatus. The armed power of the country, or the attendance of all persons charged by sheriff to assist him in the suppression of riots, etc.

Postea. Afterward; the endorsement of the verdict upon the record.

Post-Mortem. After the death.

Pound. A place where stray animals may be placed until reclaimed according to law.

Practice. The form, manner, and order of conducting and carrying on suits and prosecutions through their various stages, according to the principles of law, and the rules laid down by the courts.

Precedent. A judicial decision which serves as a rule for future determination in similar or analogous cases; an authority to be followed in courts of justice.

Precept. A command in writing, sent out by a magistrate for bringing a person or a record before him.

Pre-emption. The right given to settlers upon the public lands of the United States to purchase them at a limited price in preference to others. See page 23.

Premium. The consideration for a contract of insurance.

Prescription. The mode of acquiring property by long continued use. See page 19.

Presentment. A declaration or report made by a grand jury or others, of any offense to be inquired of in the courts to which it is presented.

Presumption. An inference made by law of certain facts from certain other facts.

Presumptive Evidence. That which is derived from circumstances which necessarily or usually attend a fact, as distinct from direct evidence or positive proof.

Presumptive Heir. One who would inherit an estate if the ancestor should die with things in their present state, but whose right of inheritance may be defeated by the birth of a nearer heir before the death of the ancestor.

Prima Facie. On its face. At first appearance.

Prima Facie Evidence. That evidence which is sufficient to establish the fact, unless rebutted or contradicted.

Primogeniture. A right by which the estate goes to the eldest son or male heir, in preference to the other children or heirs. It does not exist in the United States. See page 256.

Probate. Official proof before a competent officer that the instrument offered, purporting to be the last will and testament of a person deceased, is indeed his lawful act.

Probate Court. A court for the probate of wills. See page 276.

Process. The whole course of proceedings in a cause, real or personal, civil or criminal, from the original writ to the end of the suit. *Original Process* is the legal method of compelling the defendant to appear in court. *Mesne Process* is that which issues, pending the suit, upon some collateral or interlocutory matter. *Final Process*, a writ of execution in an action of law.

Proctor. An officer employed in Admiralty causes, answering to an *Attorney* at common law, and to a solicitor in equity.

Pro Rata. According to a proportion.

Prosecution. The institution and carrying on of a suit in a court of law or equity, to obtain some right, or to redress or punish some wrong; the process of exhibiting formal charges against an offender before a legal tribunal, and pursuing him to final judgment on behalf of the State or government, as by indictment.

Pro Tanto. For so much.

Protest. In Maritime law, a declaration made by the master of a vessel, before a notary, consul, or other authorized officer, upon his arrival in port after a disaster, stating the particulars of it, and showing that any damage or loss sustained was not owing to the fault of the vessel, her officers, or crew, but to the perils of the sea, etc. The act of a notary public on behalf of the holder of a bill or note, protesting against all parties liable for any loss or damage by the non-payment of the bill or note. See Chapter on Notaries Public.

Proxy. One who acts or stands for another in his absence.

Puberty. The age in boy of 14 and in girls of 12 years.

Putative. Reputed, supposed. The word is applied to the father of an illegitimate child. See page 259.

Quare clausum fregit. "Why he broke the close." An action for damages to real estate.

Quarantine. The period of forty days, or less, during which time the crew and ship infected with contagious disease are obliged to remain in some appointed place, without holding intercourse with the shore. The time of quarantine varies in different countries.

Quash. To abate, to annul, or to make void; as to quash an indictment.

Quasi. A Latin word meaning, almost, similar to.

Quit Claim. A form of deed, explained on page 41.

Quid pro quo. A mutual consideration.

Quo animo. With what intent.

Quo Warranto. A writ to inquire by what authority, right, or title, any person or corporation holds a franchise, exercises an office, and the like.

Quorum. The number of persons needed to legally transact business in an assembly. See page 307.

Ratification. The confirmation of an act, or decision. Giving force to a contract. Confirmation of a treaty.

Real Property. Land and the things fixed thereto, permanent, or immovable, real estate as opposed to personal or movable property.

Realty. Same as real property.

Real Action. An action for the recovery of real property.

Receiver. A person appointed to take charge of the estate and effects of a corporation, and to do other acts necessary to the winding up of its affairs.

Recognizance. A bond or obligation acknowledged in a court before a judge, with a condition which requires the one making it to do some specified act.

Recoupment. Reduction of the plaintiff's damages in an action because of some claim which the defendant has against the plaintiff.

Reference. The act of submitting a matter in dispute to the judgment of one or more persons for decision. The process of

sending any matter for inquiry to an officer in order that he may ascertain facts and report to the court. See Chapter XXXII.

Remainder. An estate in lands, tenements, etc., to be enjoyed after the expiration of another estate.

Rent. Price paid for use of land, etc. See page 248.

Replevin. An action to recover possession of goods and chattels which have been wrongfully taken or detained.

Replication. The plaintiff's answer to the defendant's plea.

Reprieve. A warrant for suspending the execution of sentence upon a criminal.

Rescission. The act of annulling a decree, judgment, or contract.

Rescue. The violent taking away or causing to escape one that is taken by lawful authority.

Residuary Clause. That part of the testator's will in which the residue of his estate is disposed of.

Residuary Devisee. The person to whom the residue of real estate is devised by a will.

Residuum. The remainder.

Res integra. An entire matter.

Res Judicata. That which has been already decided by the Court.

Respondent. The party who makes an answer to a bill or other proceeding in chancery.

Retainer. The act of a client by which he engages an attorney or counselor to manage a cause, either by prosecuting it when he is plaintiff or defending it when he is defendant. The retaining fee.

Riot. A tumultuous disturbance of the peace by three persons or more, assembling of their own authority, with an intent mutually to assist each other against any one who shall oppose them in the execution of some enterprise of a private nature, and afterward actually executing the same in a violent and turbulent manner to the terror of the people, whether the act intended were itself lawful or unlawful.

Riparian. Relating to rights in natural watercourses. See pages 105-111.

Robbery. The felonious and forcible taking from the person of another goods or money to any value by violence or putting him in fear.

Sale. An agreement by which one of two contracting parties, called the seller, gives a thing and passes the title to it in exchange for a certain price in current money to the other party, who is called the buyer or purchaser, who on his part agrees to pay such price. See Chapter XXV, page 209.

Salvage. A compensation given by the maritime law for services rendered in saving property or rescuing it from impending peril on the sea, or wrecked on the coast of the sea, or in the United States on a navigable river or lake where interstate or foreign commerce is carried on.

Scintilla. A spark; a very small quantity.

Scienter. An allegation of knowledge on the part of the defendant which is necessary to render him liable. See page 161.

Scroll. A mark, intended to supply the place of a seal, made with a pen or other instrument of writing.

Seal. An impression upon wax, wafer, or some other tenacious substance capable of being impressed.

Search Warrant. A warrant requiring the officer to whom it is addressed to search a house or other place therein specified for property therein, alleged to have been stolen, and, if the same shall be found upon such search, to bring the goods so found, together with the body of the person occupying the same, before the justice or other officer granting the warrant, or some other justice of the peace or other lawfully authorized officer.

Sedition. The raising commotions or disturbances in the State.

Seisin. Possession with an intent on the part of him who holds it to claim a freehold interest.

Servient. The term applied to the estate upon which an easement exist. The estate to which the easement belongs is called the dominant estate. See Chapter on Easements, page 88.

Separation. A cessation of cohabitation of husband and wife by mutual agreement.

Set-off. A demand which a defendant makes against the plaintiff in the suit, for the purpose of liquidating the whole or a part of his claim.

Sine die. "Without day." Applied to an adjournment.

Slander. Words spoken which are injurious to the character of another.

Solicitor. A person whose business is to be employed in the care and management of suits in courts of chancery.

Specialty. A written agreement sealed and delivered.

Specification. A particular and detailed account of a thing.

SS. Scilicet: that is to say. See page 281.

Statute. A law established by the act of the legislative power.

Stoppage in Transitu. A resumption by the seller of the possession of goods not paid for, while on their way to the vender, and before he has acquired actual possession of them. See Chapter on Sales. Page 209.

Sub-Lease. A lease by a tenant to another person of a part of the premises held by him.

Subpœna. A process to cause a witness to appear and give testimony, commanding him to lay aside all pretences and excuses and appear before a court, or magistrate therein named, at a time therein mentioned, to testify for the party named, under a penalty therein mentioned.

Suffrage. Vote; the act of voting.

Suicide. Self-destruction.

Suit. An action.

Summon. To notify the defendant that an action has been instituted against him, and that he is required to answer to it at a time and place named.

Surety. A person who binds himself for the payment of a sum of money, or for the performance of something for another who is already bound for the same.

Surrogate. Same as Probate. See Chapter XXXVI.

Tenant. One who holds lands by any right, particularly one who occupies lands or tenements at a yearly rent, for life, a term of years, or at will. See Chapter XXX.

Tenure. The condition on which lands and tenements are held.

Testament. The solemn act whereby a man declares his last will as to the disposal of his estate after his death. Another name for a will.

Title. A right which a person has to the possession of property. See page 11.

Tort. Any private wrong or injury; a wrongful act for which an action will lie. It is not the breach of a contract.

Trade-Mark. A symbol, emblem, or mark used by a manufacturer on his goods, the legal right in which is recognized by law.

Trespass. Any wrong done by one man to another, either to his person or his property. See Chapter XIV for trespass upon real property.

Trust. A right of property, real or personal, held by one party for the benefit of another.

Trustee. One who has an estate or money put into his hands for the use of another.

Turnpike. A highway over which the public have a right to travel upon payment of toll, and on which the parties entitled to the toll have the right to erect gates to insure its payment. (16 Pick., 175.)

Usury. The taking more interest for the loan of money than is allowed by law.

Vagrants. Beggars, strolling and idle persons, who wander from place to place, without any regular settlement.

Venue. The county in which the cause is tried. The place from which the jury come.

Verdict. The determination of a jury upon any cause, civil or criminal.

Vice versa. On the contrary; on opposite sides.

Vi et armis. By force and arms; by unlawful means.

Viva voce. Verbally.

Vinculo Matrimonii. From the bonds of matrimony. A complete divorce.

Voir dire. A term applied to the examination of a witness previous to his examination in chief, to ascertain whether he is in any way incompetent to give evidence in relation to the matter on trial.

Waiver. A relinquishment of, or a refusal to accept a right.

Ward. A person placed under the care of a guardian.

Warrant. A writ issued by a justice of the peace or other authorized officer, directed to a constable or other proper person, requiring him to arrest a person therein named, charged with committing some offense, and to bring him before that or some other justice of the peace.

Warranty. See Chapter on Sales.

Waste. Injury done to land by the tenant. See Chapter XV.

Will. The disposition of one's property, to take effect after death.

Witness. One who testifies under oath to what he knows.

Writ. A mandatory precept issued by the authority and in the name of the Sovereign or the State, for the purpose of compelling the defendant to do something therein mentioned.

PART III.

**FORMS FOR DRAWING THE VARIOUS IN-
STRUMENTS IN COMMON USE.**

FORMS IN COMMON USE.

Importance of Having Correct Forms. The importance of having proper forms to follow in the drafting of legal instruments can hardly be over estimated. The validity of a contract may often depend upon the words with which it is expressed. Valuable property rights may be lost by carelessness or inaccuracy in drawing a document. Uncertainty will always prevail where new and untried forms are made use of. It will be best, therefore, always to follow the old and well-tried precedents even though they may sound a little queer.

Abstracts of Title. An abstract of title is a document presenting in connected form the substance of the various instruments on record affecting the ownership of a given piece of real estate. It is a brief history of the title which the seller proposes to convey. It should commence, if possible, with the patent from the United States, though it may be sufficient if it dates back to the title in some person known to have held the land for a long series of years or whose title has been pronounced good in the courts. It should, from that time down, state every matter of record affecting the land. Of course there may be many facts affecting the title to lands which are not evidenced by the records. The abstract may exhibit a good title and yet there may be serious defects. Marriage may have created an undisclosed right of dower or a seller may have been kept out of possession by an adverse claimant who may have gained title, hence absolute dependence cannot be placed upon an abstract, though it will greatly aid in determining the question of title. See Chapter on Examining Title, page 46. There are numerous styles of drawing these instruments differing in order of arrangement, but the following form will be found, perhaps, as useful as any:

ABSTRACT OF TITLE

to Lots 1, 2, and 3, in Block 35, of the Labrosse Farm, in the City of Detroit, State of Michigan.

The United States to Peter Labrosse.	} Patent. Dated April 1, 1819. Conveys land described by metes and bounds, known as Private Claim 46, Wayne County, Michigan. Recorded in the office of the Register of Deeds for said County April 14, 1819, in Book 5 of Deeds, page 74.
Peter Labrosse and Jennette, his wife, to Lucius Abbott and Charles C. Trowbridge.	} Warranty Deed. Dated Dec. 17, 1829. \$3,500. Conveys Private Claim 46, known as the Labrosse Farm. Recorded Dec. 18, 1829, in Book 12 of Deeds, page 786.
Plat of the Subdivision of the Labrosse Farm, showing the subdivision of the same into City Lots. Acknowledged by Lucius Abbott and Charles C. Trowbridge. Recorded Dec. 12, 1835, in Book 13 of Deeds, on page 85.	
Charles C. Trowbridge and wife, Lucius Abbott and wife, to Elon Farnsworth.	} Deed of Bargain and Sale with covenant against grantors' own acts. Dated Dec. 17, 1835. \$1,850. Conveys Lots 1, 2, and 3, in Block 35, of the Labrosse Farm and other property. Recorded in Book 25 of Deeds, page 370.
Elon Farnsworth and wife, to Thomas G. Mower.	} Warranty Deed. Dated May 30, 1836. \$2,000. Conveys Lots 1, 2, and 3, in Block 35, as above described. Recorded in Book 29 of Deeds, on page 73.
Thomas G. Mower and wife, to William T. Jacobs.	} Mortgage. Dated Oct. 3, 1837. \$1,000. On lots 1, 2, and 3, as above described. Recorded Oct. 4, 1837, in Liber 21 of mortgages, page 376.
William C. Jacobs to William L. Carpenter.	} Power of Attorney Dated Oct. 3, 1837. Recorded same date in Liber 15 of Deeds, page 94.

The instrument represents that Jacobs lives in Bridgeport, Conn., and it empowers Carpenter to do all acts necessary to discharge any and all mortgages that may be held by Jacobs on property in Michigan.

William T. Jacobs, by William L. Carpenter, his Att'y in fact, to Thomas C. Mower.	} Discharge of Mortgage Executed Oct. 3, 1837. Recorded in Liber 6 of Discharges, page 78.
Sarah C. Mower, widow, Anna J. Mower, Frederick F. Mower, and Thomas Mower, only surviving children and heirs-at-law of Thomas G. Mower to Sands F. Moore.	} Warranty Deed. Dated July 6, 1848. \$3,000. Conveys Lots 1, 2, and 3, bl'k 35, above described. Recorded July 10, 1848, in Liber 91 of Deeds, page 3. The records of the Probate Court show no administration of Thomas G. Mower's estate.
State of Michigan to Thomas Farrell.	} Tax Deed. Dated February 6, 1840. Conveys Lots 1, 2, and 3, Bl'k 35, as above described, and other lands. Recorded Feb'y 10, 1840, in Liber 58 of Deeds, page 765.
Thomas Farrell to Sands F. Moore.	} Quit-claim Deed. Dated June 4, 1841. \$50. Conveys Lots 1, 2, and 3, bl'k 35, as above described. Re- corded June 4, 1841, in Liber 59 of Deeds, on page 349.

I find nothing else of record in the Register's Office for the County of Wayne, affecting the title to the land described in the caption.

DAVID ANSON.

DETROIT, January 2, 1850.

[The above form shows a very simple title, much simpler than most abstracts will show. It is not infrequent that a knowledge of facts which do not appear of record is necessary to show good title. When such is the case such facts may be shown by affidavit attached to the abstract. For instance, in the above form there appears to be nothing of record showing that Anna J. Mower, Frederick F. Mower, and Thomas Mower are the only surviving children and heirs-at-law of Thomas G. Mower, deceased. It will be well, therefore, to have the facts of the matter set forth in an affidavit, and attach the affidavit to the abstract.]

Abstract Tax Statement. It is desirable always to know that the taxes upon property which one is about buying have always been paid. Even though no tax deed appears of record, or has never issued, there may still be valid tax claims which should be known of. This knowledge is afforded by a statement from the records of the offices charged with the collection of taxes, usually the State, county, and city treasurers' offices. The following is a form of Tax Statement from the Wayne county Treasurer's office:

WAYNE COUNTY TREASURER'S OFFICE, }
Detroit, January 28, 1884. }

Tax Statement of Lots 11 and 12, Bl'k 1, Jos. Bushey's sub. of pt. of P. C. 171 N, of Chicago Road, Springwells.

This is to Certify that the above described property has not been sold (if sold has been redeemed) for State and County Taxes since the year 1846, up to and including the year 1880, as appears from the records of this office.

1881. Paid.

1882. Due \$2.05, charges to be added.

WM. D. FOX.

A similar statement respecting city taxes can be had from the city treasurer's office, and a statement as to State taxes is usually furnished for a small fee by the State Treasurer or Auditor General. The latter statement is generally called a *Tax History*.

Acknowledgments. Many instruments must be *acknowledged* by the person executing them in order to make them binding against such person, and in order to admit them to public record. This is done by the person executing them coming before the proper officer and admitting to him that they are genuine and voluntarily made, and by the officer affixing his certificate, in proper form, upon the instrument. All instruments affecting the title to real estate must usually be acknowledged. In general, the function of acknowledgment is to admit the instrument to record, but is not essential to its validity. In Md., New Mex., N. C., and Va., the acknowledgment is absolutely necessary and should always be insisted upon in all of the States. Deeds of married women are in many of the States required to be acknowledged separate and apart from her husband, but are not, however, in Ala., Ind., Kan.,

Me., Md., Mass., Mich., Vt., Wis., and in some other States. The tendency of modern legislation is to dispense with this requirement.

In Michigan acknowledgments may be taken by notaries public, justices of the peace, and judges of all courts of record. No seal is required in Michigan of the acknowledging officer. If the deed is to be recorded outside of the State the acknowledgment had better be under seal, although it is not required in all States. The notarial seal is every where recognized, and a scroll or scrawl can not be substituted for it.

All acknowledgments should commence with the statement of the locality where they are taken, called the *venue*, as follows:

STATE OF MICHIGAN, } ss.
County of Wayne.

"ss." means "to-wit." In Canada the words "to-wit" should be used instead of "ss."

FORM OF ACKNOWLEDGMENT OF DEEDS IN USE IN MICHIGAN.

STATE OF MICHIGAN, } ss.
County of Wayne.

On this tenth day of March, in the year one thousand eight hundred and eighty-five, before me, a notary public in and for said county, personally appeared John Jones, to me known to be the same person described in and who executed the within instrument, who acknowledged the same to be his free act and deed.

GEORGE A. CHASE,
Notary Public, Wayne Co., Michigan.

FORM OF ACKNOWLEDGMENT WHERE WIFE IS TO BE EXAMINED SEPARATELY.

STATE OF MICHIGAN, } ss.
County of Charlevoix.

On this twenty-eighth day of August, in the year one thousand eight hundred and eighty-five, before me, the subscriber, a Justice of the Peace in and for said county, personally appeared John Jones and Mary Jones, his wife, to me known to be the same persons described in and who executed the within instrument, who severally acknowledged the same to be their free act and deed; and the said Mary Jones, wife of the said John Jones, on a private examination by me, separate and apart from her said husband, acknowledged that she executed the same freely, and without any fear of or compulsion from any one.

W. G. HUNT,
Justice of the Peace, Charlevoix Co., Michigan.

FORM OF ACKNOWLEDGMENT BY WIFE IN USE IN PENNSYLVANIA.**COMMONWEALTH OF PENNSYLVANIA, ss.**

Before me, the subscriber, one of the judges of the Court of Common Pleas of Susquehanna County (or *the required officer*), in the Commonwealth aforesaid, personally appeared the above-named Esther C. Cummings, and acknowledged the foregoing written instrument of consent, signed by her, to be her act and deed, and that the same was done without any coercion of her husband, Gamaliel Cummings, and desired that the same might be recorded as such: and I certify that the same was done and executed before me, previously to the signing and execution of the within indenture or deed of conveyance.

In testimony whereof, I have hereunto set my hand and seal this twentieth day of August, A. D. one thousand eight hundred and —.

DAVID R. STOKES,
President Judge of Court of Common Pleas of Sus. Co.

ACKNOWLEDGMENT OF POWER OF ATTORNEY.**GALLATIN COUNTY, ss.**

Before me, the subscriber, one of the Justices of the Peace within and for said county, personally came the above-named Thomas Smith, and in his own name, and in the name of his constituent, the above-named Richard Ray (*according to the power of attorney*), in due form of law acknowledged the above-written indenture to be his own act and deed, and the act and deed of his constituent, the said Richard Ray, by him, the said Thomas Smith done and executed, by virtue of a power of attorney to him for that purpose granted [to the end that the same might, as such, be recorded].

In testimony whereof, etc.

BY A DEPUTY SHERIFF, OF A DEED EXECUTED BY HIM IN THE NAME OF THE SHERIFF.**KNOX COUNTY, ss.**

On the thirteenth day of October, A. D. 18—, Owen Spencer came before me, and personally acknowledged that he, as a general deputy of Abner Wise, Esq., the Sheriff of the County of Knox, had executed the within conveyance, in the name, and as the act and deed of the said Sheriff: and I certify that I know the said Owen Spencer, who made the said acknowledgment, to be the individual described in, and who executed the said conveyance.

LEWIS MASON,
Commissioner of Deeds of Knox County.

STATE OF _____, } ss.
County of _____.

(Signature and official title of acknowledging officer.)

COMMONWEALTH OF MASSACHUSETTS. }
Suffolk, ss. } [Date.]

(Signature and title.)

COMMONWEALTH OF MASSACHUSETTS, } ss.
County of _____.

(Signature and title.)

STATE OF MINNESOTA, } ss.
County of ———.

Witness my hand and official seal the day and year before written.
(Signature and title.)

GENERAL FORM OF ACKNOWLEDGMENT FOR USE IN MISSOURI.

STATE OF MISSOURI, } ss.
 County of ____.

On this ____ day of ____, 18—, personally appeared before me, A. B., to me known to be the person described in, and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid.

[Seal.]

(Signature and title.)

The above form will answer for the acknowledgment of husband and wife, except that she must be described as his wife.

ACKNOWLEDGMENT BY GRANTOR FOR USE IN NEW YORK.

STATE OF NEW YORK, } ss.
 County of ____.

On this ____ day of ____, A. D. 18—, before me personally came A. B., to me personally known, and to me known to be the individual described in and who executed the within (or above, or annexed) conveyance (or instrument), and acknowledged that he executed the same.

(Signature and title.)

Wife acknowledges the same as if she were unmarried.

FORM OF ACKNOWLEDGMENT BY HUSBAND AND WIFE FOR USE IN OHIO.

STATE OF OHIO, } ss.
 County of ____.

Be it remembered, that on this ____ day of ____, A. D. 18—, before me, the subscriber, a (here insert title of officer) in and for said county, personally came A. B. and C. B., his wife, and acknowledged the signing and sealing of the foregoing instrument to be their act and deed for the uses and purposes therein expressed. And the said C. B., wife of the said A. B., being examined by me separate and apart from her said husband, and the contents of said instrument made known and explained to her by me, did declare that she did voluntarily sign, seal, and acknowledge the same, and that she was still satisfied therewith as her act and deed.

In witness whereof I have hereunto set my hand and affixed my official seal on the day and year last above written.

[Seal.]

(Signature and title.)

The above form will answer for a general form by omitting what is said in reference to the wife.

**CERTIFICATE OF ACKNOWLEDGMENT BY HUSBAND AND WIFE
FOR USE IN INDIANA.**

STATE OF INDIANA, } ss.
County of ____.

Be it remembered, that on this ____ day of ____, A. D. 18__, before me (here insert name and title in full of the official taking the acknowledgment), duly commissioned and qualified, personally appeared A. B. and C. B., his wife, the grantors in the foregoing deed, and severally acknowledged the execution of the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid.

[Seal.]

(Signature and title.)

**CERTIFICATE OF ACKNOWLEDGMENT BY HUSBAND AND WIFE
FOR USE IN ILLINOIS.**

STATE OF ILLINOIS, } ss.
County of ____.

I (name and title of officer), do hereby certify that A. B. and C. B., his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as having executed the same, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and official seal, this ____ day of ____, A. D. 188__.

(Signature and title.)

Notaries public and other acknowledging officers should acquaint themselves with the provisions concerning the matter of acknowledgments in their respective States. (See Chapter on Notaries, page 278.)

Acknowledgments of mortgages, land contracts, leases, and other instruments that may require acknowledgment, are practically the same in form as those for deeds above given.

Affidavits. An affidavit is a written statement of facts sworn to by the person making it before an officer authorized to administer an oath. If the affidavit is for use in a suit or proceeding at

law, it should be accurately and properly entitled in the cause. The venue or place where it is taken must be stated. The person making it must sign it at the end, and the jurat must be signed by the officer taking the affidavit with the addition of his official title. The affidavit must describe the deponent with certainty, and this should be done not by way of mere description, but as a direct allegation in the body of the affidavit.

In the Chapter on Notaries Public, page 278, will be found some useful hints.

The following forms are adapted for general use:

COMMON FORM.

STATE OF ———, } ss.
County of ———.

A. B. being duly sworn (or affirmed) says (here set forth a statement of the facts.)

(Signature of person making the affidavit.)

Subscribed and sworn to (or affirmed) before me this day of, 18...

(Signature and title of officer.)

LEGAL FORMS.

A. B. }
v. }
C. D. }

THE CIRCUIT COURT FOR THE
COUNTY OF ———.

STATE OF MICHIGAN, } ss.
County of ———.

A. B. being duly sworn (or affirmed) says (here set forth the allegations intended to be sworn to.)

A—— B——.

Sworn (or affirmed) before me }
this — day of —, A. D. 18—. }

JAMES GORDON BENNETT,
Notary Public, Ingham County, Michigan.

AFFIDAVIT OF SERVICE OF PAPERS.

[Title of case.]

STATE OF ———, } ss.
County of ———.

A. B. being duly sworn (or affirmed), deposes and says: that he is above the age of 18 years, and that on the day of,

18..., at, he served the within paper, a copy of which is hereto annexed, on C. D., known to him to be the person described therein, by delivering the same (or a copy thereof) to him personally, and leaving the same with him.

(Signature of person serving paper.)

Subscribed and sworn to (or affirmed) before me this day of, 18...

(Signature and title of officer.)

AFFIDAVIT TO A PETITION.

[Title of case.]

STATE OF _____, } ss.
County of _____.

A. B. being duly sworn (or affirmed), deposes and says: that he has read the foregoing petition subscribed by him, and that the same is true of his own knowledge, save as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

(Signature of person making the affidavit.)

Subscribed and sworn to (or affirmed) before me this day of, 18...

(Signature and title of officer.)

Special forms of affidavits will be found attached to the various forms for which they are intended.

AFFIDAVIT OF REGULARITY.

THE CIRCUIT COURT FOR THE COUNTY OF _____,

In Chancery,

_____,
Complainant.
vs.
_____,
Defendant.

STATE OF MICHIGAN, } ss.
County of _____.

..... Solicitor.. for the Complainant in the above entitled cause, being duly sworn, doth depose and say, that the said Bill of complaint was filed with the Register of this Court, on the day of, 188..., by the above named Complainant against the above named Defendant, to dissolve the mar-

riage between them, because of the
.....
of the said Defendant; that the said Bill has been taken as con-
fessed by the said Defendant;
.....
and that all the proceedings to take said Bill as confessed have
been regular and according to the rules and practice of this Court.
Sworn to and subscribed before me, }
this day of, 188.. }

AFFIDAVIT FOR GOODS SOLD AND DELIVERED.

STATE OF INDIANA, }
County of Harrison. } ss.

Walter Forward, of Corydon, in said County, being duly sworn,
deposes and says, that Amasa Peabody, of Hartford, County of
Hartford, and State of Connecticut, is justly and truly indebted
unto him, this deponent, in the sum of dollars, for goods sold
and delivered by him to the said Amasa Peabody. That he has
given credit to the said Amasa Peabody for all payments and
set-offs to which he is justly entitled, and that the balance claimed
according to the foregoing account is justly due; and that said
account is correctly stated.

Sworn, etc.

Agreements or Contracts. In the first Chapter of this book
the general principles governing contracts and the requisites essen-
tial to their validity are set forth. It will be well to give them
careful attention, as they are of very wide application in the busi-
ness world, nearly every legal transaction being reducible to a
contract.

The following forms are of general application:

FORM OF AGREEMENT.

THIS AGREEMENT, made the eleventh day of October, A. D.
18.., by and between H..... R....., of, County
of, and State of, of the first part, and G.... C.....,
of, County of, and State of, of the second
part, *witneseth*:—That the said R....., in consideration of the
covenants on the part of the party of the second part hereinafter
contained, doth covenant and agree to and with the said C.....
that [here insert the agreement on the part of R.....]; and the

said C....., for and in consideration of the covenants on the part of the party of the first part, doth covenant and agree to and with the said R....., that [here insert the agreement on the part of C.....].

In witness whereof, we have hereunto interchangeably set our hands and seals, day and year first written.

Signed, sealed and delivered } H—— R——, [SEAL.]
in presence of } G—— C——, [SEAL.]

_____.

GENERAL FORM OF CONTRACT, WITH PROVISION FOR LIQUIDATED DAMAGES IN CASE OF BREACH.

This agreement, made the day of, one thousand eight hundred and, by and between A. B., of the town of, county of, State of, of the first part, and C. D., of, county of, State of, of the second part, witnesseth: That the said party of the second part covenants and agrees to and with the party of the first part, to [here insert the subject-matter of the agreement]. And the said party of the first part covenants and agrees to pay unto the said party of the second part, for the same [here insert the consideration and the terms of payment].

And for the true and faithful performance of all and every of the covenants and agreements above mentioned, the parties to these presents bind themselves, each unto the other, in the penal sum of dollars, as liquidated damages, to be paid by the failing party.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

[Signatures.] [SEALS.]

Signed, sealed, and delivered }
in the presence of }
[Signatures of witnesses.]

MEMORANDUM OF AGREEMENT TO SELL LAND.

This memorandum made this 5th day of October, 1883, witnesseth: that John Smith agrees to sell the farm now occupied by him in Pleasant Valley to Thomas Brown for \$5,000 (or if it is at a certain price per acre, so state it), and to give a warranty deed therefor upon payment of the purchase price within ten days. And the said Thomas Brown agrees to buy the same accordingly.

JOHN SMITH,
THOMAS BROWN.

It is sometimes better to put the contract itself in writing instead of making a written note or memorandum of it. When this is done an instrument somewhat more formal and particular than the above should be made use of, as follows:

AGREEMENT TO SELL LAND.

THIS AGREEMENT made this day of October, A. D. 1883, between John Smith, of the township of Pleasant Valley, county of Heartsease, in the State of Utopia, party of the first part, and Thomas Brown, of the same place, party of the second part, witnesseth: That the said party of the first part, in consideration of the agreements as herebelow expressed on the part of the party of the second part to be performed, does hereby agree to sell unto the said party of the second part all that certain piece or parcel of land known and described as follows, to-wit: (insert description) for the sum of five thousand dollars, to be paid in manner following, viz.: one thousand dollars on the execution and delivery of this agreement, and the balance within three years from the date hereof, in sums of not less than one thousand dollars each, with lawful interest on the amount remaining unpaid. And the said party of the second part, in consideration of the premises, agrees to buy the said land and pay for it the said sum of five thousand dollars in the manner as above set forth. And it is mutually agreed that the said party of the second part shall have and take immediate possession of the said land, and shall, from this time on, pay all taxes and assessments that may be levied upon it. And the said party of the first part further agrees that upon receiving the said sum of five thousand dollars, at the time and in the manner above mentioned, he will forthwith execute and deliver to the said party of the second part, at his own proper cost and expense, a good and sufficient deed, for the conveying and assuring to him the fee simple of said premises free from all incumbrances; which deed shall contain a general warranty and the usual full covenants.

In witness whereof the said parties to these presents do hereunto set their hands and seals the day and year first above written.

JOHN SMITH, { L. S. }

Signed, sealed, and delivered }
in presence of

THOMAS BROWN, { L. S. }

WILLIAM GRAY,
RICHARD JONES.

A contract to sell or lease lands may be made by one's attorney, but where it is so made it must distinctly and clearly appear to be

the act and deed of the principal; it must be executed in his name and purport to be sealed with his seal.⁽¹⁾

Land contracts are of great variety; they are sometimes made payable in monthly installments running over a long period of time; sometimes they provide that the person selling shall build a house on the premises, and that the person buying shall take possession and commence making payments as soon as the house is done; often they provide that if the purchaser fails to keep up his payments such failure shall terminate his rights in the premises, that he shall yield up possession and forfeit all that he has paid. Such a provision, however, cannot generally be enforced. While it is perfectly proper and legal for parties in contracting to stipulate what damages either shall pay the other on failure to perform his part of the contract, and while such stipulated damages are generally enforceable, still the Courts will regard a forfeiture like the above as being in the nature of a penalty, and will only permit a recovery of such damages as are actually suffered.⁽²⁾ Where the contract is of such a nature that the damages resulting from a breach of it are uncertain, or where they are better known or can be better estimated by the parties to the contract than by any one else, it is always proper and desirable that the parties themselves should ascertain by fair calculation the amount of such damages and stipulate that such amount shall be paid in case of failure to perform the contract.⁽³⁾

The following form will be useful to those who desire to sell land upon monthly, quarterly, semi-annual, or yearly installments:

LAND CONTRACT—INSTALLMENT PLAN.

THIS CONTRACT, made the day of, A. D. 1884, between John Smith, of Smithville, Jones County, in the State of New York, party of the first part, and Thomas Brown, of Thomastown, Brown County, in said State, party of the second part, *Witnesseth* as follows, to wit:

1. The said first party, for and in consideration of the sum of Four Thousand Dollars, to be paid with interest in the manner below set forth, and for other considerations herebelow indicated, agrees to sell and forthwith after the performance of this contract to convey to said second party by full warranty deed the following described premises, to wit: All that certain piece of land known

⁽¹⁾ 4 Hill, 351.

⁽²⁾ 6 Mass., 488; 15 Mass., 488.

⁽³⁾ 7 Conn., 291; 13 Wend., 507; 22 Wend., 201.

as lot ten, in block three, of Smith's Addition to the Village of Smithville, in said State and County, according to the recorded plat thereof in the office of the Register of Deeds of said County, in Liber three, of plats, on page seventy. Said sum of Four Thousand Dollars is to be paid as follows: One thousand dollars at the time of the ensembling and delivery of these presents, and the remainder in one hundred monthly payments of thirty dollars each, to be paid on the first day of each and every month, commencing on the first day of January, A. D. 1884, with interest on the amounts remaining unpaid computed every six months, to be paid in addition to the said monthly payment. Said second party is also to pay all taxes and assessments that may be levied on the said premises after the first day of January, A. D. 1884.

3. Said second party agrees to buy the said premises upon the terms above set forth, to pay therefor the said sum of Four Thousand Dollars, with interest at the times and in the manner hereinbefore specified, and to pay the said taxes and assessments as is hereinabove provided.

4. The parties hereto mutually agree that said second party shall have immediate possession of said premises; that no building shall be erected on said premises nearer than *twenty* feet from Peters street; AND FURTHER, That if the said second party shall make default in any of the *monthly* payments as herein agreed by him to be made, and shall neglect or refuse so to do for a period of *thirty days* he shall at the option of said first party be deemed to have refused to complete this contract, and the same may be then declared terminated by said first party, and said second party shall thereupon become a tenant at will of said premises, and be liable to be proceeded against without notice to quit. AND IT IS FURTHER AGREED, That in case this contract is so terminated for default on the part of said second party, such party shall pay said first party *thirty* dollars per month for each and every month that he has been in possession of said premises, both before and after this contract is so terminated, as a reasonable rental therefor; and in addition thereto said second party agrees to pay to said first party Five Hundred Dollars as stipulated damages for his breach of this contract. Said stipulated damages are not to be regarded as a penalty or forfeiture, but as the amount necessary to reimburse said first party for the loss and injury resulting to him from the failure of said second party to perform his part of this contract.

It is also agreed that in case said second party shall fail in any instance to pay taxes or assessments when due said first party may do so, and the amounts so paid shall be added to the consideration above named, and shall become payable with the next payment on this contract, and shall draw interest at the rate of ten per cent per annum until paid.

This contract may be assigned by consent of the said first party endorsed hereon.

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HEIDT BECK CO I P/E, TIFFIN, OHIO.

The obligations of this contract are hereby made binding upon the legal representatives of the parties hereto.

In Witness whereof the said parties hereto set their hands and seals.

-----, { L. S. }

-----, { L. S. }

-----, { L. S. }

Another method of making sure of the performance of an agreement to sell a farm or a parcel of land is for the purchaser to take from the seller a *bond for a deed*. This is an obligation for the payment of a certain sum of money to become binding on the obligor, as he is termed, unless he shall, upon a certain date, duly deed to the obligee the premises in question upon the terms agreed to.

BOND FOR CONVEYANCE OF LAND.

KNOW ALL MEN BY THESE PRESENTS, That I, John Smith, of Smithville, Jones County, in the State of New York, am held and firmly bound unto Thomas Brown, of Thomastown, Brown County, in said State, in the sum of four thousand dollars, to be paid to the said Thomas Brown, his heirs, administrators, or assigns, to the payment whereof I bind myself, my heirs, executors and administrators firmly by these presents.

Sealed with my seal and dated this second day of January, A. D. 1884.

THE CONDITION OF THIS OBLIGATION IS, That if the said John Smith, upon payment to him by the said Thomas Brown of the sum of three thousand dollars in three annual payments of one thousand dollars each, to be made on the second day of January in each year with interest on the amount remaining unpaid, at seven per cent per annum, shall convey to the said Thomas Brown and his heirs forever a certain tract or parcel of land situated in the county of Jones in the State of New York, described as follows, to wit: (Here describe the land) and in the meantime shall permit said Thomas Brown to occupy and improve said premises for his own use and benefit, then this obligation shall be void, otherwise to remain in full force and effect.

IN TESTIMONY whereof, I have hereunto set my hand and seal the day and year first above written.

JOHN SMITH, { L. S. }

If a bond for a deed is given the purchaser he can recover from the seller such damages as he has been put to if the deed is not given, but he cannot compel the seller to give a deed if the seller does not choose to. If, however, a contract of sale is duly executed in writing and the seller refuses or neglects to give the deed as agreed upon, the purchaser can obtain from a court of chancery a decree of specific performance, as it is called, which will compel him to do so.

SHORT AGREEMENT FOR BUILDING A HOUSE.

This agreement for building, made the eighteenth day of March, one thousand eight hundred and eighty-five, by and between A. B. of the city of Detroit, in the county of Wayne and State of Michigan, of the first part, and C. D. of the township of Dearborn in the county of Wayne and State of Michigan of the second part, witnesseth: That the said party of the second part covenants and agrees to and with the said party of the first part to make, erect, build, and finish in a good, substantial, and workmanlike manner, on the vacant lot of the said party of the first part situate on Fourth avenue in said city of Detroit, a dwelling house, agreeable to the draft, plan, and explanation hereto annexed, of good substantial materials, [if the materials are to be furnished by the party of the first part, say: of such materials as the said party of the first part shall find or provide for the same], by the first day of August next.

And the said party of the first part covenants and agrees to pay unto the second part for the same the sum of five thousand dollars, lawful money of the United States, as follows: two thousand dollars in thirty days from the date hereof, and the remaining sum of three thousand dollars when the said dwelling house shall be completely finished. [If necessary add: And also that he will furnish and procure the necessary materials for the said work in such reasonable quantities and at such reasonable time or times as the said party of the second part shall or may require.]

And for the true and faithful performance of all and every of the covenants and agreements above mentioned the parties to these presents bind themselves, each unto the other, in the penal sum of ten thousand dollars, as fixed and settled damages to be paid by the failing party.

In Witness, etc., (as in preceding form.)

ANOTHER AGREEMENT FOR BUILDING A HOUSE.

Articles of agreement made and concluded the day of, one thousand eight hundred and, between A. B. of County of and State of, of the first part, and C. D. of the same place, of the second part, as follows, viz.:

The said A. B., for the considerations hereinafter mentioned, doth, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors, administrators, and assigns, that he, the said A. B., shall and will, within the space of next after the date hereof, in a good and workmanlike manner, and according to the best of his knowledge and skill, well and substantially build, set up, and finish one house or messuage, on [describing the location] in such place as the said C. D. shall direct at aforesaid, of the dimensions following, viz.: [describe the house in full; if a plan be used, add afterwards, according to the draft or plan hereto annexed], with such stone or brick, lumber and other materials, as the said C. D., or his assigns, shall provide and furnish for the same.

In consideration whereof, the said C. D. doth, for himself, his executors and administrators, covenant and promise with and to the said A. B., his executors, administrators, and assigns, well and truly to pay, or cause to be paid, unto the said A. B., his executors, administrators, and assigns, the sum of five thousand dollars, in manner following, to wit: five hundred dollars, part thereof at the beginning of the said work; one thousand dollars more thereof on the first day of July next; two thousand dollars more thereof on the fifteenth day of August next, and fifteen hundred dollars in full for the said work at the time the same shall be fully completed, [varying these terms according to the agreement].

And also, that he, the said C. D., his executors, administrators, and assigns, shall and will at his and their own proper expense, find and provide all the stone, brick, tile, timber, and other material necessary for the making and building of the said house.

And for the true and faithful performance of each and all of the covenants and agreements aforesaid, each of the said parties bindeth himself, his heirs, executors, and administrators unto the other, his executors, administrators, and assigns, in the penal sum of dollars [or, "in the sum of dollars, to be taken as liquidated and stipulated damages,"] firmly by these presents.

In witness whereof, we have hereunto set our hands and seals the day and year first above written.

A. B., [SEAL.]

C. D. [SEAL.]

Sealed and delivered }
in presence of }

DANIEL DORMAN,
WILLIAM LYELL.

AGREEMENT FOR BRICKLAYER'S AND PLASTERER'S WORK.

MEMORANDUM OF AN AGREEMENT made this first day of May, A. D. 18—, between A. B. of the of, County of ... and State of, of the one part, C. D. of the same, of the other part, as follows: The said A. B. for the consideration hereinafter mentioned, doth covenant, promise and agree with, and to the said Thomas Ewing, that he, the said A. B., shall and will do and perform all the work belonging to the bricklayer and plasterer, in and about the erection and building of a certain house [describing the location] in a sufficient and workmanlike manner, at his own charge and expense, with the materials to be provided for that purpose by the said C. D.; that he will build the same with the thickness of walls, height or number of stories, and the number and kind of lights, chimneys, and conveniences, together with the ornamental work in and about the said building as the said C. D. shall direct him, paying and discharging all the said workmen by him employed in and about the same; and, that he will completely finish all the work herein by him agreed and covenanted to be by him done and performed on or before the day of next.

And the said C. D., for and in consideration of the true and faithful performance of the work to be done as aforesaid, doth agree and covenant to and with the said A. B., that he shall and will well and truly pay, or cause to be paid, unto the said A. B., for all such work, ornamental work excepted, to be by him done and performed in and about the building aforesaid, at and after the rate of for every yard which said work shall measure, reckoning three feet square for every yard; and for all the said ornamental work to be performed as aforesaid, the sum of dollars in full: and the said C. D. will pay all the said money as follows, viz.: [insert the terms.] And it is further covenanted and agreed, by and between the parties hereunto, that each and all of the foregoing covenants and agreements are to apply to, and bind, the heirs, executors, and administrators of the respective parties hereto.

In witness whereof, etc., [as in foregoing.]

Sealed and delivered }
 in presence of }
 ROBERT RAY,
 KENNETH KITE.

A. B., [SEAL.]

C. D. [SEAL.]

AGREEMENT TO BUY A MERCHANT'S STOCK, ETC.

THIS AGREEMENT, made this day of, A. D. 18—, by and between A. B., of, County of, and State of, and C. D. of the said: Witnesseth, that in consideration of

the covenants on the part of the said C. D. hereinafter contained, the said A. B. doth hereby covenant and agree to and with the said C. D., that he will purchase of the said C. D. all his stock of goods, wares, and merchandise, now being and contained in his, the said C. D.'s store, in said, together with all the fixtures thereto belonging, an account of such goods, wares, and merchandise being taken by the parties hereto in the presence of each other; and the said A. B. agrees to pay for the same at the invoice price thereof; but, if any of the said goods be damaged, such damaged goods, together with the fixtures aforesaid, are to be appraised and valued by three disinterested persons, each party hereto selecting one, and the two so selected to select a third, and the said A. B. agrees to pay for the same the price which the three appraisers aforesaid shall set thereon in their valuation and appraisal of the same; and, that within ten days after the value of said goods, wares, merchandise, and fixtures can be ascertained as aforesaid, the said A. B. is to pay the valuation thereof to the said C. D.

And the said C. D., in consideration of the foregoing covenants by the said A. B. to and with him the said C. D. made, covenants and agrees to and with the said A. B., that he, the said C. D., will sell to him, the said A. B., the said goods, wares, and merchandise at the invoice price, and the fixtures and such goods as may be damaged, at such price as the appraisers aforesaid may fix and determine; and to make, execute, and deliver unto the said A. B. a good and sufficient bill of sale and conveyance thereof, and to yield and deliver to him, the said A. B., quiet and peaceable possession thereof upon payment to him, the said C. D., by the said A. B., within the time before specified, of the invoiced and appraised value of the goods, wares, merchandise, and fixtures aforesaid. In witness whereof, etc.

Sealed and delivered }
in presence of }

LEVI MERRIAM,
ENOS DRAKE.

A. B., [SEAL.]
C. D. [SEAL.]

[If desired, the form for appraising damaged goods can be made applicable to the entire stock.]

AGREEMENT FOR THE SALE OF GRAIN.

IT IS AGREED this fourth day of June, A. D. 18—, by and between A. B., of, County of and State of, and C. D., of, County of and State of, as follows: The said C. D., in consideration of five hundred bushels of wheat, to him this day sold by the said A. B., and by the said A. B. agreed

to be delivered to him, the said C. D., on or before the day of, free of all charges, agrees to pay to the said A. B. within one month after such delivery, the sum of three hundred and seventy-five dollars. And the said A. B., in consideration of the aforesaid agreement of the said C. D., doth hereby agree to forward and deliver to the said C. D., at aforesaid, free of all charge, the said five hundred bushels of wheat, so to him sold as aforesaid, hereby warranting the same to be good, clean and merchantable grain.

Witness our hands and seals, day and year first written.

Sealed and delivered }
in presence of }
 EGBERT RICHTER,
 JOHN DAVY.

A. B. [SEAL.]

C. D. [SEAL.]

AGREEMENT FOR LEASE OF HOUSE.

IT IS AGREED this day of, A. D. 18.., between A. B., of, County of and State of, of the one part, and C. D., of aforesaid, of the other part, as follows: The said A. B. doth agree to let unto the said C. D., all that certain lot of ground with the house thereon, being and situate [here describe the premises] for one year from the first of February next, and for such longer time after the expiration of the said year as both the said parties shall agree, and until the end of three months after notice shall be given by either of the said parties, to the other of them, for leasing the said premises, at and for the yearly rent of four hundred dollars, payable quarterly on the first days of May, August, November, and February, in equal portions; which said yearly rent, payable quarterly as aforesaid, the said C. D., for himself, his executors, and administrators, doth hereby covenant and agree to pay to the said A. B., his executors, administrators, and assigns, accordingly, for so long a time as he shall hold and enjoy the said premises as aforesaid, and until the end of the said three months next after notice shall have been given by either of the above parties to the other, for leasing the said premises as aforesaid.

Witness our hands and seals, day and year first above written.

Signed, sealed and delivered }
in presence of us, }
 JOSEPH CLOSE,
 BARCLAY THOMAS.

A. B. [SEAL.]

C. D. [SEAL.]

CONTRACT WITH A CLERK OR WORKMAN FOR SERVICES.

MEMORANDUM OF AGREEMENT made this day of,

18.., between A. B., of County of, State of of the first part, and C. D., of, County of, State of, of the second part, witnesseth: That the said A. B. agrees faithfully and diligently to serve the said C. D., as [insert position to be held] at for the period of from and after day of, 18.. In consideration of which service so to be performed by the said A. B., the said C. D. agrees to pay to the said A. B. the sum of dollars, to be paid as follows: dollars on the day of 18.., and dollars on the day of each and every month following during the said term, and the balance, if any, at the expiration of the said term.

And it is understood and agreed, that the death of either party during the said term shall terminate this contract.

In witness whereof we have hereunto set our hands and seals this
.... day of, 18..

A. B.

Signed, sealed and delivered in presence of

C. D.

[Signatures of witnesses.]

CONTRACT FOR SALE OF GOODS.

THIS AGREEMENT, made this day of, 18—, between A. B., of and C. D., of, witnesseth: That it is hereby agreed by the said parties, that all the stock of goods, wares, and merchandise, which are the property of A. B., and contained [state where goods, etc., are] which are mentioned in the schedule hereunto annexed, together with the furniture and fixtures thereunto appertaining, shall, at the joint and equal charge of the said parties, be appraised by M. N. and O. P., on or before the day of next, when the said M. N. and O. P. shall, in writing by them signed, give in their appraisement to the said parties; and in case the said appraisers shall differ in such valuation, then a third indifferent person chosen by them as an umpire shall determine the same, whose valuation in writing by him signed shall be given in to the said parties, within three days after his election. And the said A. B. covenants with the said C. D. that, immediately after such valuation being made, he will make and deliver an absolute bill of sale, of all the said goods and stock in trade, and will give possession thereof unto the said C. D., at the price the same shall be appraised at as aforesaid. And the said C. D. hereby covenants with the said A. B., that he will accept the said property at such price, and, on the delivery thereof with the bill of sale, will pay to the said A. B. the sum of money at which the same shall be appraised as aforesaid.

In witness, etc., as in previous forms.

A. B. [SEAL.]
C. D. [SEAL.]

Signed, sealed, and delivered in presence of
[Signatures of witnesses].

The following is a schedule of the goods and chattels referred to on the preceeding page:

1 dozen cane seat chairs.....	@ \$	\$
2 sofas @ \$.....		\$
Etc., etc., etc.		A. B. C. D.

AGREEMENT TO CULTIVATE LAND ON SHARES.

THIS AGREEMENT made the day of, one thousand eight hundred and eighty-five, between A. B., of the township of Dearborn, in the county of Wayne, and State of Michigan, and C. D., also of the same township, county and State, witnesseth: That the said A. B. agrees that he will break up, properly fit, and sow with wheat, all that field belonging to the said C. D. lying immediately north of the dwelling house and garden of the said C. D. in the Township aforesaid, and containing twenty acres or thereabouts, on or before the twenty-fifth day of September next; that when the said crop, to be sown as aforesaid, shall be in fit condition, he will cut, harvest, and safely house it in the barn or barns of the said C. D., and that he will properly thresh and clean the same, and deliver one-half of the wheat, being the produce thereof, to the said C. D. at the granary near his dwelling-house as aforesaid, on or before the day of, in the year 18...

It is understood between the parties that one-half of the seed wheat is to be found by the said C. D.; that the said A. B. is to perform all the work and labor necessary in the premises or cause it to be done; and that the straw is to be equally divided between the parties within ten days after the crop of wheat shall have been threshed as aforesaid.

In witness, etc. [See preceding forms.]

Apprentices. In the Chapter on Hiring Help, will be found a general statement of the law governing the matter of apprenticeship. (See page 190.) The following is a general form of

APPRENTICE'S INDENTURE:

THIS AGREEMENT WITNESSETH: That A. B., of,, does by these presents bind out his (or, if the father is not living, her) son C. B., and that the said C. B. does hereby bind himself out as an apprentice to E. F. of,, to learn the art (business, or trade) of (state what.)

That the said C. B. is at the date hereof aged years.

That said C. B. shall dwell with and serve said E. F. as such apprentice from the date hereof till day of

That during said term said apprentice shall faithfully serve his said master, keep his secrets, and at all times readily obey his lawful commands. He shall do no damage to his master, nor willfully suffer any to be done by others. He shall at all times diligently promote his master's interests, shall not absent himself from the service of his master, but in all things shall demean and conduct himself as a good and faithful apprentice ought.

That the said E. F., in consideration thereof, does hereby covenant, promise, and agree to instruct and teach said apprentice, or cause him to be instructed and taught in all the ways of the art (business, or trade, etc.,) aforesaid to the best of his ability and means; to instruct and teach said apprentice, or cause him to be instructed and taught to read, write, and cipher, to find and provide said apprentice good and sufficient food, clothing, lodging, and other necessities during said term, and at the expiration thereof to give him — dollars (clothes, etc., as the parties may agree).

In witness whereof the parties hereto have here set their hands and seals this day of, A. D.

-----, { L. S. }

-----, { L. S. }

-----, { L. S. }

CONSENT OF FATHER OR MOTHER.

I do hereby consent to, and approve of, the binding of my son, C. B., as in the above (or within) indenture mentioned. Dated the day of, 188..

A B

JUSTICE'S CERTIFICATE WHERE MOTHER GIVES CONSENT.

I, G. H., justice of the peace of the town of, in the County of and State of, do certify that A. B., the father of the infant named in the within indenture, is dead (or is not legally competent to give his consent thereto, or has abandoned or neglected to provide for his family). Dated the day of, 188..

G H,
Justice of the Peace.

CONSENT OF GUARDIAN.

I, J. K., the guardian duly appointed of C. B., in the within indenture named, do certify that the father and mother of the said C. B. are dead, (or that the father of the said C. B. is dead, and that his mother refuses her consent to the said indenture of apprenticeship, or is not in legal capacity to give her consent;) and I do hereby consent, as his guardian, that he, the said C. B., may bind himself in and by said indenture.

Dated the day of, 188..

J. K., Guardian of the said C. B.

ASSIGNMENT OF FOREGOING INDENTURE.

Know all men by these presents, that I, the within named E. F., for and in consideration of the sum of dollars, have assigned and set over, and by these presents do assign and set over, the within indenture together with the apprentice therein named, unto C. D., of, his executors, administrators, and assigns, for the residue of the term within mentioned; he and they performing all and singular the covenants therein contained on my part to be kept and performed, and indemnifying me from the same.

In witness whereof I have hereunto set my hand and seal, the day of, 188..

E. F. [L. s.]

In the presence of

G. H.

L. M.

An indenture of apprenticeship is not assignable as a matter of right, though it would be valid against the one who made it as a promise of the services of the apprentice. (19 Johnson, 113.)

Arbitration. The law governing the matter of arbitration and award is set forth in the chapter on that subject, commencing on page 253.

The following general forms can be modified to suit the special requirements of the cases that may arise:

SUBMISSION TO ARBITRATORS.

Whereas, a controversy is now existing and pending, between A. B. of, etc., and C. D., etc., in relation [here state the substance

of the controversy]. Now, therefore, we, the undesigned, A. B. and C. D. aforesaid, do hereby submit the said controversy to the arbitrationment of E. F., L. M., and S. T., of, etc., or any two of them, and we do mutually covenant and agree, to and with each other, that the award to be made by the said arbitrators, or any two of them, shall, in all things by us and each of us, be well and faithfully kept and observed: provided, however, that the said award be made in writing under the hands of the said E. F., L. M. and S. T., or any two of them, and ready to be delivered to the said parties in difference, or such of them as shall desire the same, on the day of next.

Witness our hands and seals this day of, A. D. 188..
In the presence of

A. B. [SEAL.]
C. D. [SEAL.]

SHORT FORM OF GENERAL SUBMISSION.

We, the undersigned, hereby mutually agree to submit all our matters in difference, of every name or nature, to the award and determination of E. F., L. M., and S. T., for them to hear and determine the same, and make their award in writing, on or before the day of next.

Witness our hands and seals this day of, A. D. 1885.
In the presence of

A. B.
C. D.

AGREEMENT FOR JUDGMENT, TO BE INSERTED IN THE SUBMISSION, IF NECESSARY.

And it is hereby further agreed between the said parties, that judgment in the court of [here state what court] may be rendered upon the award to be made pursuant to this submission, to the end that all matters in controversy between them shall be finally concluded.

ARBITRATION BOND.

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of, County of and State of, am held and firmly bound to C. D., of etc., in the sum of dollars, good and lawful money of the United States, to be paid to the said C. D., his executors, administrators, or assigns, for which payment well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal, and dated the day of, A. D. 18...

The condition of this obligation is such, that if the above bounden A. B., his heirs, executors, and administrators, shall and do, in all things, well and truly abide by, perform, and fulfill in all things the award, decision, and final determination of E. F., L. M., and S. T., appointed and named on the part and behalf of the said A. B., as well as the said C. D., to arbitrate, award, order, and determine of and concerning all, and all manner of action and actions, cause and causes of actions, suits, controversies, claims, and demands whatsoever, now pending, existing, or held by and between said parties, so that the said award be made in writing under the hands of the said E. F., L. M., and S. T., or any two of them and ready to be delivered to the parties in difference, or to such of them as shall desire the same, on or before the day of, A. D. 18..., then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed, and delivered }
 in presence of }
 RUDOLPH SHAFFER,
 AUGUSTUS POPE.

A. B. [SEAL.]

C. D. [SEAL.]

(Each party to the arbitration should give to the other a bond like the above.)

NOTICE TO ARBITRATORS OF THEIR APPOINTMENT.

To E. F., L. M., and S. T., Esquires:

You are hereby notified that you have been nominated and chosen arbitrators, as well on the part and behalf of the undersigned, A. B., of etc., and C. D., of etc., also undersigned to arbitrate, award, etc. [here insert as in the submission as well as Bond, specifying the time within which the award must be made], and you are requested to meet the said parties at the house of O. R., in the of, county of, and State of Michigan, on the day of, A. D. 18..., at .. o'clock in the ...noon of that day, for the purpose of fixing upon a time and place where and when the proofs and allegations of the said parties shall be heard.

Dated the day of, A. D. 18...

Yours, etc.,

A. B.

C. D.

ARBITRATOR'S OATH.

We, the undersigned, arbitrators, appointed by and between A. B., and C. D., do swear respectively, that we will faithfully hear and examine the matters in controversy between the parties above

named, and will make a just award therein, according to the best of our understanding.

Sworn to this day of , }
A. D. 188.. Before me, }

E. F.
L. M.
S. T.

NOTICE OF HEARING FOR OPPOSITE PARTY, IF NECESSARY.

In the matter of an arbitration,
of and concerning matters
in difference between A. B.
of the one part and C. D. of
the other part. }

SIR: You will please take notice that a hearing in the matter above specified, will be had before the arbitrators, at the house of O. R. in the of , etc., on the day of , etc.

Yours, etc.,

A. B.

OATH OF WITNESS BEFORE ARBITRATORS.

You do solemnly swear (or affirm) that the evidence you shall give to the arbitrators here present, on a controversy between A. B. and C. D., shall be the whole truth and nothing but the truth: So help you God (or and so you do affirm).

REVOCATION.

To E. F., L. M., and S. T., Esquires:

Take notice, that I do hereby revoke your powers as arbitrators under the submission made to you by C. D. and myself, in writing [or as the case may be] on the day of , 188..

A. B.*

NOTICE OF REVOCATION.

To C. D.:

You are hereby notified that I have this day revoked the powers of E. F., L. M., and S. T., arbitrators chosen to settle the matters in controversy between us; and that the following is a copy of such revocation.

Dated the day of , 188..

Yours, etc.,

A. B.

* If the submission be under seal, the instrument revoking it should likewise be.

AWARD BY ARBITRATORS.

TO ALL TO WHOM THESE PRESENTS SHALL COME, OR MAY CONCERN: Send greeting, E. F., L. M., and S. T., to whom were submitted as arbitrators, the matters in controversy existing between A. B., of, county of and State of, and C. D., of etc., as by their submission in writing, dated the day of, A. D. 18. . ., more fully appears. Now, therefore, know ye, that we, the arbitrators mentioned in said submission, having first been duly sworn according to law, and having heard the proofs and allegations of the parties, and examined the matters in controversy by them submitted, do make this award in writing, that is to say:

[Here insert the conclusions of the arbitrators as to all the matters submitted for their decision.]

And we do further award, adjudge, and decree, that the said A. B. and C. D. shall, and do, within ten days next ensuing the date hereof, seal and execute unto each other, mutual and general releases of all actions, cause and causes of actions, suits, controversies, and demands whatsoever, for, or by reason of, any matter, cause or thing, from the beginning of the world down to the date of the said submission.

In witness whereof we have hereto subscribed these presents, this day of, A. D., 18. . .

Signed, sealed and delivered }
in presence of
SAMUEL ROOD,
ABRAM WINGALL.

E. F. [SEAL.]
L. M. [SEAL.]
S. T. [SEAL.]

Assignments. When one person turns over to another any right which he may possess he is said to assign it, and the instrument by which he does it is called an assignment. The term is applied to the transfer of some right already in existence as distinguished from the creation of a new right. Thus we speak of the assignment of a contract or the assignment of a lease. The person making the assignment is called the *assignor*, the one to whom it is made the *assignee*.

All assignments affecting the title to land should be acknowledged and recorded, as in the case of conveyances.

In order to render an assignment of a policy of insurance valid, it must be made to one having possession of the premises or thing insured at the time, and be allowed by the insurers. If an assignment be made after loss, and without consent of the insurer, the assignee, although in possession before the loss, cannot recover.

An assignment of a bond or book-account may be effected by a simple delivery of the evidence of debt for a valuable consideration thereby giving an assignee permission to sue for the same in the name of the assignor. As this assignment, however, gives the assignee no better title than the assignor had, it is always prudent to give the debtor notice of the proposed assignment, that it may be ascertained whether he has any defense to the claim.

In some of the States, assignees are allowed by statute to sue in their own name, when the bond is for payment of money, and drawn to order or assigns, and the assignment is in writing under seal, and executed in the presence of two or more credible witnesses.

An assignment is valid only when made in good faith. Any party interested in testing its validity, can do so in an action; if it can be shown before a jury that the assignment was made to evade debts due to creditors, they will set it aside; if such fraud cannot be proved, then it will stand.

An assignment by a debtor for the benefit of his creditors must be an unconditional surrender of all his effects. If he secretly hold back any property, such withholding is fraudulent, and punishable by statute.

An insolvent debtor has the right to prefer one creditor to the exclusion of all others, in case it be done in good faith.

All assignments for the benefit of creditors must be accompanied by immediate delivery of the property.

Assignments of leases and other instruments affecting the title to real estate, as well as assignments of mortgages, must be acknowledged and recorded, like all other conveyances of such property.

The proper words to constitute an assignment are, "assign, transfer, and set over."

ASSIGNMENT OF A DEED.

KNOW ALL MEN BY THESE PRESENTS, That A. B., the grantee within named, and, his wife, for and in consideration of the sum of dollars, to them in hand paid by C. D., of, County of, and State of, at and before the ensembling and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, and set over unto the said C. D., his heirs and assigns, all that the within messuage, tenement, and tract of land, (describing it,) containing twenty acres, more or less, being the same premises which E. F., by the

within written indenture, dated the day of A. D. 18 . . . , and recorded in, etc., granted and conveyed unto the said A. B., his heirs and assigns; [or, as the case may be,] together with all and singular the rights, members and appurtenances whatsoever thereunto belonging, or in any wise appertaining; and the reversions, remainders, rents, issues, and profits thereof; to have and to hold the said messuage, tenement, or tract of land, hereby granted and assigned, with the appurtenances, unto the said C. D., his heirs and assigns, to his and their only proper use and behoof forever. And the said A. B., and his heirs, shall and will warrant and forever defend by these presents, the said hereby granted and assigned premises with the appurtenances, unto the said C. D., his heirs and assigns, against the said A. B., and his heirs, and against all and every other person or persons whatsoever, lawfully claiming, or to claim, by, from, or under him, them, or any of them.

In witness whereof, the said parties have hereunto set their hands and seals this day of , in the year of our Lord one thousand eight hundred and

Signed, sealed, and delivered }
in presence of
WILLIAM GRAY,
RICHARD JONES.

A. B. { L. s. }

C. D. { L. s. }

ASSIGNMENT OF DEMAND FOR WAGES OR DEBT.

IN CONSIDERATION of dollars, to me in hand paid by C. D., of the of , the receipt whereof is hereby acknowledged, I, A. B., of the same place, have sold, and by these presents do sell, assign, transfer, and set over, unto the said C. D., a certain debt due from E. F., amounting to the sum of dollars, for work, labor, and services by me performed for the said E. F. (or for goods sold and delivered to the said E. F.), with full power to sue for, collect, and discharge, or sell and assign the same in my name or otherwise, but at his own cost and charges; and I do hereby covenant that the said sum of dollars is justly due as aforesaid, and that I have not done, and will not do any act to hinder or prevent the collection of the same by the said C. D.

Witness my hand, this April 10th, 1863.

A. B.

ASSIGNMENT OF ACCOUNT ENDORSED THEREON.

IN CONSIDERATION of one dollar, value received, I hereby sell and assign to C. D. the within account, which is justly due from the within named E. F., and I hereby authorize the said C. D. to collect the same.

A. B.

New York, April 10, 1863.

ASSIGNMENT OF A LEASE.

KNOW ALL MEN BY THESE PRESENTS, That I, the within-named A. B., for and in consideration of the sum of dollars, to me in hand paid by C. D., of, County of and State of, at and before the ensealing and delivery hereof, the receipt whereof I do hereby acknowledge, have granted, assigned, and set over, and by these presents do grant, assign and set over unto the said C. D., his executors, administrators, and assigns, the within indenture of lease, and all the messuage therein described, with the appurtenances; and also all my estate, right, title, term of years yet to come, claim and demand whatsoever, of, in, to, or out of the same; to have and to hold the said messuage and appurtenances unto the said C. D., his executors, administrators, and assigns, for the remainder of the within-mentioned term, under the rents and covenants within reserved and contained, on my part and behalf to be done, kept and performed.

In witness whereof, etc.

A. B. [SEAL.]

Signed, sealed, and delivered in presence of

GENERAL FORM OF AN ASSIGNMENT, TO BE ENDORSED UPON ANY INSTRUMENT.

KNOW ALL MEN BY THESE PRESENTS, That I, the within named A. B., in consideration of the sum of dollars, to me paid by C. D., have assigned, transferred, and set over unto the said C. D., and his assigns, all my interest to and in the within-written instrument, and every clause, article, or thing therein contained; and I do hereby constitute the said C. D., my attorney, in my name, but to his own use, and at his own risk and costs, to take all legal measures which may be necessary for the full recovery and enjoyment of the assigned premises, with power of substitution.

In witness whereof, etc.

A. B. [SEAL.]

Executed and delivered in presence of

ASSIGNMENT OF A DEBT.

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of, County of and State of, in consideration of dollars, to me in hand paid by C. D., of the same place, the receipt whereof I hereby acknowledge, have assigned, transferred, and set over unto the said C. D., a certain debt due and owing to me from E. F., of, County of and State of, for (here state the nature of the debt), amounting to one hundred and

fifty dollars; hereby authorizing the said C. D., in my name or otherwise, but at his own cost, to sue for, collect, receive, sell, transfer, settle or discharge the said debt. And I do covenant to and with the said C. D., that the said sum of dollars is justly due and owing to me from the said E. F., and that I have neither done, nor will do, any thing to diminish or discharge the said debt, or hinder the said C. D., or his assigns, from collecting the same.

In witness whereof, etc.

A. B. [SEAL.]

Executed and delivered in presence of

DECLARATION TO ACCOMPANY ABOVE.

I, C. D., of, County of and State of, do hereby declare that I have no claim or set-off to make to the payment of a certain debt due and owing by me to A. B., of, County of and State of, for (stating its nature), amounting to dollars; but, that the whole of the said sum of money (with interest from, A. D., 18..), remains unpaid and owing by me.

C. D.

Witness:

ANOTHER FORM FOR ASSIGNMENT OF A DEBT.

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of, County of and State of, in consideration of the sum of dollars, now justly due and owing by me to C. D., of the same place, and for the better securing the payment of the same to the said C. D., have bargained, sold, assigned, and transferred to him, all that debt or sum of eight hundred dollars, now due and owing to me from E. F., of the and County of, in the State of, for goods sold and delivered by me to the said E. F., or his order, before the day of the date hereof, and all my right, title, and interest, claim and demand, of, in, and to the said debt or sum of dollars, or any part thereof; to hold to the said C. D., his executors, administrators, and assigns, from henceforth, to his and their sole use and behoof forever.

In witness whereof, etc.

A. B. [SEAL.]

Signed, sealed, and delivered in presence of

ASSIGNMENT OF A CLAIM FOR MONEY DUE ON ACCOUNT, COLLECTIBLE AT LAW IN THE NAME OF THE ASSIGNOR FOR THE USE OF THE ASSIGNEE.

KNOW ALL MEN BY THESE PRESENTS, That I,, of

....., County of and State of, in consideration of the sum of one hundred dollars, to me in hand paid by, of aforesaid, do hereby assign and set over unto the said, to his own proper use, without any account to be given for the same, the sum of dollars, and any and all other sum or sums of money that are remaining due and payable upon and by reason of the annexed account of moneys due me by, of the and County of, State aforesaid, and all my right, title, interest, and demand, to and in the same; and do give and grant unto the said, full power and authority to demand and receive the same to his own use, and upon receipt thereof, or of any part, to give discharges for the same. And I, the said, do hereby covenant and agree to and with the said, that the said sum of dollars is justly due and owing; and that I have not received or discharged the same, or any part thereof.

In witness whereof, etc.

[SEAL.]

Signed, sealed, and delivered in presence of

ASSIGNMENT OF POLICY OF INSURANCE.

Having sold and conveyed the premises within mentioned to, of, County of, and State of, his heirs and assigns forever, I do hereby, for and in consideration of the sum of one dollar, to me in hand paid by the said, assign and transfer the within policy of insurance to him, his executors, administrators, and assigns. The said, by subscribing this assignment, makes himself responsible for all the covenants to which I have bound myself by the within policy.

Witness our hands and seals, etc.

Signed, sealed, and delivered }
in presence of }

A. B. [SEAL.]

C. D. [SEAL.]

.....

.....

ASSIGNMENT OF SHARES IN A COMPANY.

FOR VALUE RECEIVED, I,, of, County, and State of, assign the whole of my right, title, and interest of, in, and to shares in the Company, of, to of, County of, and State of, and constitute him, his assigns and substitutes, my attorney and attorneys, with full power to execute, in his or their name or names, certificates for the said shares; hereby obliging myself, at his or their request, to do all necessary matters and things for the more effectual transfer of said shares to him or them. — Witness my hand, etc.

[SEAL.]

Acknowledged before me, a Notary Public in and for the
County of , State of, this fifth day of May, A. D. 18...

.....
Notary Public.

ASSIGNMENT OF A SEAMAN'S WAGES.

KNOW ALL MEN BY THESE PRESENTS, That I,, of
., County of, and State of, for and in consid-
eration of the sum of dollars, in which I am justly indebted
to, of the same place, have assigned, sold, transferred, and
set over, and do hereby, by these presents, assign, sell, transfer,
and set over, unto the said, all such sum or sums of money
as are now due and owing to me, the said, for wages or
services on board the ship called ".," from the master or
owner of said vessel, as mariner on her voyage from, to the
port of, which has recently terminated. And I do hereby
constitute the said my attorney irrevocable, with full
power in my name, but at his own charge, to prosecute, recover,
receive, and give discharges for the same. And I, the said,
do hereby covenant and agree, to and with the said, that I
have never released or discharged, and that I will not release or
discharge, the claim or demand arising and accruing as aforesaid.
Witness my hand, etc.

C. D. [SEAL.]

Signed, sealed, and delivered in presence of
[Signatures of witnesses].

ASSIGNMENT OF PARTNERSHIP PROPERTY AND DEBTS, BY ONE PARTNER TO ANOTHER, IN TRUST, TO CLOSE THE CONCERN.

WHEREAS, A co-partnership has heretofore existed between
. and, both of the city of, which co partnership
has been known under the name of, and which it is the
intention of the said co-partners forthwith to dissolve and deter-
mine:

Now, this indenture of two parts, made this day of ,
in the year 18.., by and between the said, of the one part,
and the said, of the other part, *witnesseth*:

First—That the co-partnership aforesaid, is hereby, by the
mutual consent of the said parties, dissolved and determined.

Second—The said doth hereby sell, transfer, assign and
set over unto the said, his moiety of all the stock in trade,
'goods, merchandise, effects, and property of every description
belonging to or owned by the said co-partnership, wherever the
same may be, together with all debts, causes of action, and sums of

money due and owing to the said firm from any and all persons whomsoever, to hold the same to the said, and his assigns forever, in trust for the following purposes, namely: That the said, shall sell and dispose of all the goods, property, and effects belonging to the said firm, at such time and in such manner as he may think prudent; and shall, with reasonable diligence, collect all the debts and sums of money due and owing to the said firm; and shall, out of the proceeds of the said sales, and with the money thus collected, pay and discharge all the debts and sums of money now due and owing from the said firm, as far as the proceeds of said sales and the sums of money collected will go; and, after fully satisfying all demands against the said firm, if there be any surplus, shall pay over one moiety thereof to the said or his assigns.

Third—The said, doth hereby constitute and appoint the said, his attorney irrevocable, in his, the said own name, or in the name of the said firm, to demand, collect, sue for and receive any and all debts and sums of money due and owing to the said firm; to institute and prosecute any suits for the recovery of the said debts, or to compound the same, as he may judge most expedient; to defend any and all suits against the said firm; to execute all such proper writings and acquittances as may be necessary; and generally to do all such acts and things as may be necessary or proper for the full and complete settlement of all business and concerns of the said co-partnership.

Fourth—That said, for himself and his heirs, executors, and administrators, hereby covenants to and with the said, and his assigns, that he will sell and dispose of all the partnership property and effects to the best advantage; that he will use his best diligence and endeavors to collect all debts and sums of money due and owing to the said firm; and that he will truly and faithfully apply the proceeds of said sale, and the moneys collected, to the payment, discharge, and satisfaction of all debts and demands against the said firm, as far as the same will go; and, after discharging all such debts, will pay over to the said, or his assigns, one moiety of any surplus that may remain; and further, that he will keep full and accurate accounts of all moneys received by him for goods sold, or debts collected, as well as of moneys paid out, and will render a just, true, and full account therefor to the said

Fifth—The said, for himself, etc., covenants to and with the said, etc., that, upon settlement of accounts, if it shall be found that the debts due and owing from the said firm exceed the amount of moneys received from the sale of the said goods, and the debts collected, he will pay unto the said, or his assigns, one moiety of any balance that may then be due and owing from the said firm.

In testimony whereof, etc., (as in general form of assignment.)

ASSIGNMENT OF PARTNERSHIP PROPERTY AND DEBTS DUE BY
ONE PARTNER TO ANOTHER FOR A CERTAIN SUM.

THIS INDENTURE of two parts, made and concluded this day of, in the year 18.., by and between, of,, of the first part, and, of,, of the second part—witnesseth:

That, whereas, the said parties were lately co-partners in the business of, which partnership was dissolved and determined on the day of last; and whereas many debts due and owing to the said parties on account of their said co-partnership, are still outstanding, and debts due by the said firm are yet unpaid; and whereas it is agreed that the said party of the second part shall assign and release to the said party of the first part all his interest in the stock in trade, goods, and effects, belonging to the said firm, and in the debts now owing to the said firm, and that the said party of the first part shall assume all the debts and liabilities of the said firm, and shall discharge and indemnify the said party of the second part from all liabilities and losses arising from the said partnership.

Now, therefore, in pursuance of the said agreement, and in consideration of the sum of, paid and secured to the said, he, the said, doth hereby fully and absolutely sell, assign, release, and make over to the said, all his right, title, interest, and share, in and to all the stock in trade, goods, merchandise, machinery, tools, books, leasehold premises, and effects, belonging to the said partnership, of whatever kind or nature, and wheresoever situated; also, all his right, title, and interest in and to all the debts and sums of money now due and owing to the said firm, whether the same be by bond, bill, note, or account, or otherwise; and the said, doth hereby make and appoint the said, his executors, administrators, and assigns, to be his attorney and attorneys, to receive all and several the debts and sums of money above mentioned, to his and their own use and benefit; and doth hereby authorize the said his executors, etc., to demand, collect, and sue for the said debts and sums of money, and to use his, the said name in any way or manner that the collection, recovery, and realization of the said debts and demands may render necessary, as well in court as out of court, but at their own proper costs and charges, and without cost or damage to the said And the said doth hereby further authorize the said to convey and transfer to his own name, and for his own use and benefit, any and all sums of money and effects, real and personal estate, which may be taken or received in the name of the said firm, and to hold the same free from all claims by the said, his executors, administrators, or assigns.

And these presents further witness, that, in pursuance of the said agreement, the said, for himself, his executors, and

administrators, doth hereby covenant to and with the said, his executors and administrators, that he, the said, and his, etc., shall pay and discharge, and at all times hereafter save harmless and indemnify, the said, his, etc., from and against all and every the debts, duties, and liabilities, which, at the dissolution and termination of the said partnership, were due and owing by the said firm to any person or persons, for any matter or thing touching the said partnership, and of and from all actions, suits, costs, expenses, and damages, for, or concerning the said debts, duties, and liabilities, unless the said shall have contracted any debts or incurred any liabilities, in the name, and on account of the said firm, which are unknown to the said, and do not appear in the books of the said firm, for which, if any such exist, the said does not hereby intend to make himself responsible.

In testimony whereof, etc. (as in general form of assignment).

ASSIGNMENT OF A BOND BY ENDORSEMENT.

KNOW ALL MEN BY THESE PRESENTS, That I, the within-named, for, and in consideration of the sum of, to be paid by of, at or before the sealing of these presents, (the receipt whereof is hereby acknowledged), have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over, unto the said, his executors, administrators, and assigns, the within-written bond or obligation, and the sum of, mentioned in the condition thereof, together with all interest due and to grow due for the same, and all my right, title, interest, claim and demand, whatsoever, of, in, and to the same. And I authorize the said, in my name to demand, sue for, receive, have, hold, and enjoy the said sum of, and interest, to his own use absolutely forever.

In testimony, etc. (as in general form of assignment).

ASSIGNMENT BY A DEBTOR TO TRUSTEES, FOR THE BENEFIT OF HIS CREDITORS.

THIS INDENTURE, made the day of, eighteen hundred and, by and between, of, merchant, of the first part,, of, of the second part, and the several persons, creditors of the said party of the first part, who have executed or shall hereafter execute or accede to these presents, of the third part—witnesseth:

That, whereas, the party of the first part is indebted to divers persons in considerable sums of money, which he is at present unable to pay in full, and he is desirous to convey all his property

for the benefit of all his creditors, without any preference or priority other than that provided by law.

Now, the party of the first part, in consideration of the premises, and of one dollar paid to him by the party of the second part, hereby grants, bargains, sells, assigns, and conveys, unto the party of the second part, and his heirs and assigns, all his lands, tenements, hereditaments, goods, chattels, property, and choses in action, of every name, nature, and description, wheresoever the same may, except such property only as is exempted by law from attachment.

To have and to hold the said premises unto the said party of the second part, and his heirs and assigns.

But in trust and confidence, nevertheless, to sell and dispose of the said real and personal estate, and to collect the said choses in action, using a reasonable discretion as to the times and modes of selling and disposing of said estate, as it respects making sales for cash or on credit, at public auction or by private contract, and with the right to compound for the said choses in action, taking a part for the whole, where the trustees shall deem it expedient so to do; then in trust to dispose of the proceeds of the said property in the manner following, viz.:

First—To pay all such debts as by the laws of the United States or of this State are entitled to a preference in such cases;

Second—To pay the costs and charges of these presents, and the expenses of executing the trusts declared in these presents;

Third—To distribute and pay the remainder of the said proceeds to and among all the parties of the third part, ratably, in proportion to their respective debts; (or, if there is a statute regulating the distribution, say,) according to the true intent and meaning of an act entitled "An act," etc.:

And, if there should be any surplus, after paying all the parties of the third part in full, then in trust;

Fourth—To pay over such surplus to the party of the first part, his executors, administrators, or assigns.

And the party of the first part hereby constitutes and appoints the party of the second part his attorney irrevocable, with power of substitution, authorizing him, in the name of the party of the first part, or otherwise, as the case may require, to do any and all acts, matters, and things, to carry into effect the true intent and meaning of these presents, which the party of the first part might do if personally present.

And the party of the second part, hereby accepting these trusts, covenants to and with each of the other parties hereto, to execute the same faithfully.

And the party of the first part hereby covenants with the said trustee, from time to time, and at all times when requested, to give him all the information in his power respecting the assigned property, and to execute and deliver all such instruments of further assurance as the party of the second part shall be advised by coun-

sel learned in the law to be necessary in order to carry into full effect the true intent and meaning of these presents.

And the parties of the third part, by signing and sealing these presents, express their assent to this assignment, and accept the provision for them made herein, pursuant to the statute aforesaid.

In testimony whereof, etc. (as in general form of assignment).

ASSIGNMENT OF A JUDGMENT.

*Title of
the
Cause.* }

Judgment and costs, \$50.00.

Judgment roll filed in the office of the clerk of on the day of, 18...

For and in consideration of dollars to me in hand paid, I hereby sell, assign, and transfer to A. B. the judgment above mentioned, for his use and benefit, and authorize him to collect and enforce the payment thereof in my name or otherwise, but at his own expense, and covenanting that the sum of dollars, with interest from the day of, 18..., is due thereon.

In witness, etc.

[Signature.] [Seal.]

ASSIGNMENT OF TAX BID.

FOR A VALUABLE CONSIDERATION, to in hand paid, the receipt whereof is hereby acknowledged do by these presents, assign, transfer and set over to of all claim, right, title, and interest, in and to the within certificate of tax sale No., issued by the Treasurer of County, for taxes of the year 18...

In testimony whereof, have hereunto set hand and seal this day of, 18...

....., { L. S. }

....., { L. S. }

In presence of

.....,
.....

STATE OF MICHIGAN, } ss.
 County of ——— }

On this day of, A. D. 18.., personally came before me, a in and for said County, the above named and acknowledged the foregoing assignment to be free act and deed.

.....,
 County, Mich.

ASSIGNMENT OF MORTGAGE.

KNOW ALL MEN BY THESE PRESENTS, That of the first part, for and in consideration of the sum of lawful money of the United States of America, in hand paid by of the second part, at or before the ensealing or delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said part.... of the second part, a certain indenture of mortgage, bearing date the day of one thousand eight hundred and eighty made and recorded in the Register's Office of the County of, State of Michigan, in Liber of Mortgages, at page ..., with all and singular the premises therein mentioned and described together with the or obligation therein also mentioned, and the moneys now due, and the interest that may hereafter grow due thereon; to have and to hold the same unto the said part.... of the second part, heirs and assigns, forever, subject only to the proviso in the said indenture of mortgage mentioned. And do hereby authorize and appoint the said part.... of the second part, true and lawful attorney, irrevocable in name, or otherwise, but at proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the sum or sums of money now due and owing, or hereafter to become due and owing, upon the said and mortgage; and in case of payment to give acquittance or other sufficient discharge, as fully as might or could do if these presents were not made; and do hereby for heirs, executors, and administrators, covenant, promise, and agree to and with the said part.... of the second part, that there is due upon the said and mortgage the sum of

and that ha... good, right, and lawful authority to grant, bargain and sell the same in manner aforesaid.

Sealed and delivered the day of, 188...

In presence of }

..... { L. S. }

STATE OF MICHIGAN, }
County of ——— } ss.

On this day of A. D. one thousand eight hundred and eighty, before me, a in and for said County, personally appeared to me known to be the same person.. described in and who executed the within instrument and acknowledged the same to be free act and deed.

Bills of Exchange and Promissory Notes. A Bill of Exchange is a written order or request made by one person to another for the payment of money. A promissory note is a written promise to pay a certain sum of money, at a future time, unconditionally. When payable to order or to bearer these instruments are negotiable, and are transferred by endorsement. The parties to a bill of exchange are the *drawer*, or one who makes it; the *drawee* or one to whom it is payable, and the *acceptor* or one to whom it is directed. If the drawee indorses over to another person he becomes an *endorser*, and the person to whom it is indorsed becomes the *holder*. If the bill on being presented to the drawee is not by him "accepted" it must be protested for non-acceptance, in order to hold the indorser. See Chapter on Notaries, page 285.

The parties to a Promissory Note are the *maker*, the *payee*, and the *indorser*. When duly indorsed a promissory note becomes in legal effect almost identical with a bill of exchange, and must like that instrument be "protested for non-payment" in order to hold the endorser. For form of protest see page 286.

The following are the forms in common use:

BILL OF EXCHANGE.

\$10,000.

DETROIT, Aug. 31, 1885.

Thirty days after sight pay to the order of Messrs. Z. H. & Co. ten thousand dollars, and charge to the account of

H. A.

To Messrs. A. S. B. & Co., New York.

ACCEPTANCE OF A BILL OF EXCHANGE.

The usual form of accepting a bill of exchange is to write the word "accepted" with the name of the acceptor, across the face or on the back of the bill or draft.

ANOTHER FORM OF BILL OF EXCHANGE.

\$1,000.

NEW YORK, May 1, 18...

At sight [or — days after sight, or — days after date, or on the — day of —, 18—], pay to the order of C. D., one thousand dollars, and charge the same to account of

Yours, etc., A. B.

To Messrs. E. F. & S. H., New Haven.

Bills of Exchange are of two kinds, *Foreign* and *Inland*. A Foreign Bill is one of which the drawer and drawee are residents of countries foreign to each other. In this respect the States of the United States are held foreign to each other. (2 Peters, 589).

An Inland Bill is one of which the drawer and drawee are residents of the same State or country.

A SET OF FOREIGN BILLS OF EXCHANGE.

Ex. £1000 Stg.

NEW YORK, May 1, 18...

Ten days after sight of this my first of exchange (second and third unpaid), pay to E. F. or order one thousand pounds sterling, value received, and charge the same to the account of

A. B.

To Messrs. E. Bond & Co., London.

Ex. £1000 Stg.

NEW YORK, May 1, 18...

Ten days after sight of this my second of exchange (first and third unpaid), pay to E. F. or order one thousand pounds sterling, value received, and charge the same to the account of

A. B.

To Messrs. E. Bond & Co., London.

Ex. £1000 Stg.

NEW YORK, May 1, 18...

Ten days after sight of this my third of exchange (first and second unpaid), pay to E. F. or order, one thousand pounds sterling, value received, and charge the same to the account of

A. B.

To Messrs. E. Bond & Co., London.

COMMON FORM OF PROMISSORY NOTE.**\$990.00.****LANSING, Mich., Sept. 1, 1885.**

Sixty days after date I promise to pay to the order of James Gordon Bennett nine hundred and ninety-nine dollars at Lansing National Bank, with interest at seven per cent per annum. Value received.

OLIVER CROMWELL.

No. Due

NOTE NOT NEGOTIATABLE.**\$450.00.****NEW YORK, Jan. 2, 1884.**

Ninety days after date, for value received, I promise to pay to James Brown four hundred and fifty dollars.

JOHN CURTIS.

The introduction of the words "or order" into the above note would render it negotiable.

A NEGOTIATABLE NOTE.**\$1,000.****HARRISBURG, June 4, 1884.**

Sixty days after date, I promise to pay to James Brown, or order, one thousand dollars (insert interest if intended), without defalcation or discount, for value received.

JOHN CURTIS.

NOTE WITH SURETY.**\$700.****ALBANY, March 2, 1884.**

Ninety days after date, I promise to pay to A. B., or order, seven hundred dollars, for value received.

C. D.
E. F., Surety.

A NEGOTIATABLE NOTE.**\$200.**

Thirty days after date, for value received, I promise to pay to A. B., or order, two hundred dollars.

C. D.

A JOINT NOTE.

\$1,600.

PEORIA, Ill., Sept. 1, 1885.

Thirty days after date we jointly, but not severally, promise to pay to Carter Harrison, or order, sixteen hundred dollars, for value received, with interest at six per cent per annum.

MILES STANDISH,
THOMAS JONES.

If the above note were worded "*jointly or severally*" it would be a joint and several note, and could be collected from either of the makers.

INDORSEMENT TO ORDER.

Pay to the order of G. H.

A. B.

INDORSEMENT TO AGENTS, FOR COLLECTION.

Pay to the order of the cashier of the First National Bank of New York, for collection.

A. B.

INDORSEMENT WITHOUT RECOURSE.

Pay to the order of G. H., without recourse.

A. B.

DRAFT.

\$500.

NEW YORK, May 1, 18...

Three days after sight, pay to the order of A. B. five hundred dollars, value received, which charge to the account of

Yours, etc.,

F. KEYS & Co.

Messrs. H. Smith & Co., Boston.

CHECK.

NEW YORK, June 1, 18...

First National Bank of New York:

Pay to John Smith or order, three hundred and fifty dollars (\$350).

JAMES BROWN.

Bills of Lading. A bill of lading is the written evidence of a contract for the carriage and delivery of goods, sent by water, for a certain freight. It is signed by the captain or master of the ship or vessel, and states, among other things, the names of the parties by whom the goods are shipped, and where and to whom they are to be delivered. There are generally three copies of the instrument, one of which is sent to the consignee of the goods by the ship which carries the goods, another by some other conveyance, and the third is kept by the merchant or shipper. The following is a common form:

BILL OF LADING.

[Copy the marks of the packages in the margin here.] Shipped, in good order and well conditioned, by [name the consignor of the goods], on board the [describe vessel] called the [name vessel], whereof M. N. is master, now lying in the port of, and bound for the port of, [here designate the merchandise] being marked and numbered as in the margin, and are to be delivered in the like order and condition at the port of, (the dangers of the seas only excepted), unto [name the consignee] or to his [or their] assigns, he or they paying freight for the said with primage and average accustomed. IN WITNESS WHEREOF, The master or purser of the said vessel hath affirmed to (three) bills of lading all of this tenor and date; one of which being accomplished, the others to stand void.

Dated in the day of, 18...

[Signature of Master.]

BILL OF LADING.

Shipped, in good order and well conditioned, by A. B., on board the steamship called the *Bothina*, commanded by E. F., now lying in the port of Boston and bound for the port of Liverpool [here designate the merchandise], being marked and numbered as in the margin, and are to be delivered in the like order and condition at the port of Liverpool (the dangers of the sea only excepted) unto C. D., or to his assigns, he paying freight for the said with primage and average accustomed.

In witness whereof the master or purser of the said vessel hath affirmed to (three) bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void.

Dated in the day of, 18...

E. F.

The instrument given by the carrier of goods by land is somewhat similar to a bill of lading, but is called a *Shipping Receipt*.

Bills of Sale. A bill of sale is an agreement in writing, under seal, by which one person conveys to another the right and title which he has in goods and chattels. Its most common use is to effect a transfer of personal property of which immediate possession cannot be given. By the maritime law, the transfer of a ship must generally be done by a bill of sale.

A bill of sale is usually sufficient to pass a title to personal property, even against creditors of the seller, provided it be made for a good consideration, and free from taint of fraud.

A bill of sale, executed in fraud of creditors, is absolutely void.

SHORT FORM OF BILL OF SALE.

KNOW ALL MEN BY THESE PRESENTS, That I, of County of and State of, in consideration of dollars, to me paid by, of the same place, have bargained and sold to said, the following goods and chattels, to wit: one gray horse, one wagon, and three cows.

In witness whereof I have hereunto set my hand and seal, this day of, A. D. 18...

Signed, sealed, and delivered } [SEAL.]
in presence of }

BILL OF SALE OF GOODS.

KNOW ALL MEN BY THESE PRESENTS, That I, of County of and State of, for and in consideration of the sum of dollars to me in hand paid by, of the same place, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained, sold, and delivered, and by these presents do bargain, sell, and deliver unto the said (insert a list of the goods sold): To have and to hold the said goods unto the said, his executors, administrators, and assigns, to his and their sole use and behoof, forever. And I, the said, for myself, my executors and administrators, will warrant and defend the said bargained premises unto the said, his executors, administrators, and assigns, from and against all persons whomsoever. In witness whereof, etc.

Signed, sealed, and delivered } [SEAL.]
in presence of }

BILL OF SALE OF HOUSEHOLD GOODS, WITH SCHEDULE, ETC.

KNOW ALL MEN BY THESE PRESENTS, That I,, of, parish of..... and State of, in consideration of the sum of one thousand dollars, to me in hand paid by, of the same place, at and before the ensealing and delivery hereof, the receipt whereof I do hereby acknowledge, have bargained, sold, released, granted, and confirmed, and by these presents do bargain, sell, release, grant, and confirm unto the said, all the stock, goods, household stuff, implements of household, and all other goods and chattels whatsoever, mentioned and expressed in the schedule hereunto annexed, now remaining and being in the house lately occupied by me in said, and upon the plantation on which said dwelling house stands; to have and to hold all and singular the said stock, goods, and chattels, and every of them, by these presents bargained, sold, released, granted, and confirmed, unto the said, his heirs, executors, administrators, and assigns, to his and their only proper use and behoof, forever.

In witness whereof, etc.

Signed, sealed, and delivered }
in presence of }

[SEAL.]

Schedule.

The following is a schedule of the goods and chattels granted in the foregoing bill of sale:

[The schedule should set forth each article sold and signed by the seller in the annexed bill of sale.]

BILL OF SALE OF A HORSE, WITH WARRANTY.

KNOW ALL MEN BY THESE PRESENTS, That I,, of, County of and State of, for and in consideration of the sum of \$..... dollars to me in hand paid by, of the same place, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained, sold, and delivered, and by these presents do bargain, sell, and deliver unto the said (here describe the horse fully): To have and to hold the same, unto the said, his executors, administrators, and assigns, forever.

And I do hereby warrant the said horse to be sound in every respect, to be free from vice, well broken, kind and gentle in single and in double harness, and under the saddle; and I do covenant for myself, my heirs, executors, and administrators, with the said, to warrant and defend the sale of the said horse unto the said, his executors, administrators, and assigns, from and against all and every person or persons, whomsoever, lawfully claiming, or to claim the same. In witness whereof, etc.

Signed, sealed, and delivered }
in presence of }

[SEAL.]

BILL OF SALE COMMONLY USED IN MICHIGAN.

KNOW ALL MEN BY THESE PRESENTS, That of the
..... ofin the County of and State of, of
the first part, for and in consideration of the sum of dollars,
lawful money of the United States, to paid by
of of the second part, the receipt whereof is hereby
acknowledged, ha... bargained and sold, and by these presents do
..... grant and convey unto the said part.. of the second part,
..... executors, administrators, or assigns, all the
.....
belonging to and now in possession at
.....
To have and to hold the same unto the said part.. of the second
part, executors, administrators, and assigns, forever. And
the said part... of the first part for heirs, executors,
and administrators, do covenant and agree to and with the
said part... of the second part, executors, administrators,
and assigns, to warrant and defend the sale of the said property,
goods, and chattels hereby made, unto the said part... of the sec-
ond part, executors, administrators, and assigns, against all
claim or claims, and every person or persons whatsoever.

.....
In witness whereof, have hereunto set hand and seal
this day of, one thousand eight hundred and

Signed, sealed, and delivered } [SEAL.]
in presence of } [SEAL.]
[SEAL.]

BILL OF SALE OF A VESSEL.

TO ALL TO WHOM THIS BILL OF SALE SHALL COME: Know
ye, That
..... part... of the first part for and in consideration of the
sum of to in hand paid, at or before the enseal-
ing and delivery of these presents, by part... of the
second part, the receipt whereof is hereby confessed and acknowl-
edged, ha... granted, bargained, sold, assigned, transferred, and
delivered unto the said part... of the second part, the
good together with all and singular, her anchors, chains,
cables, masts, rigging, tackle, apparel, and furniture of every
name, kind, and description whatever, the certificate of whose last
enrollment is in the words and figures following, viz.:

ENROLLMENT No.....

Enrollment in conformity to Title L, "Regulation of Vessels in Domestic Commerce," of the Revised Statutes of the United States.

-OFFICIAL NUMBER.	
NUMERALS.	LETTERS.

.....
having taken and subscribed the required by law, and
having that he..., together with
....., citizen... of the United States, sole owner.. of the
ship or vessel called the, of, whereof
is at present Master, and as he hath is a citizen of the
United States, and that the said ship or vessel was built at
..... in the year 18..., as appears by.....
..... And.....
..... having certified that the said ship or vessel has
deck.. and mast.., and that her length is
..... IV feet
her breadth..... IV feet
her depth..... IV feet
her height..... IV feet
that she measures and hundredths tons, viz.:

	TONS.	100THS.
Capacity under tonnage deck.....		
Capacity between decks above tonnage deck		
Capacity of inclosures on the upper deck, viz. :.....		
Total Tonnage.....		

That the following described spaces, and no others, have been
omitted.:
that she is a, has a stern and
..... head. And the said.....
having agreed to the description and measurement above specified,
and sufficient security having been given according to the said
title, the said ship or vessel has been duly enrolled at the port of
.....

Given under my hand and seal, at the Port of
[L. s.] in the District of this
..... day of, in the year one thousand
eight hundred and seventy-.....
..... [L. s.]
Naval Officer. Collector of Customs.

To have and to hold, the said and the appurtenances thereunto belonging, unto the said part.. of the second part heirs and assigns, to sole and only proper use, benefit, and behoof, forever.

And the said part.. of the first part, do hereby covenant, promise and agree, to and with the said part.. of the second part, heirs and assigns, that at the time of the ensealing and delivery of these presents,, the said part.. of the first part, sole, true, and lawful owner of the said vessel and of the appurtenances thereunto belonging; that they are free from all liens and incumbrances, and that will forever warrant and defend the same against the lawful claims or demands of all persons whatsoever.

In witness whereof, the part.. of the first part hereunto set hand.. and seal.. at the city of this day of, A. D. 187...

In presence of }

{ SEAL. }
{ SEAL. }

Bonds. A bond is a written instrument, under seal, by which the maker acknowledges some debt, liability, or duty, which he agrees to discharge or in default to pay a penalty therein named. The maker of a bond is called the *obligor*, the person to whom it is made, the *obligee*. A bond for the payment of money at an appointed day, without expressing any condition which may render the bond void, is called a *single* bond. It is very much like a note. It is usual, however, to add a condition that if the obligor performs some particular act, the obligation shall be void; otherwise it shall remain in full force and virtue.

The penalty in a bond is usually fixed at double the amount of the real debt, for the purpose of securing the full debt with interest, and costs if necessary.

If the debt secured is not paid, or the obligation, whatever it may be, is not performed, the penalty becomes due; but all that can be recovered out of it is the actual debt with interest and costs, or the actual damages that have been occasioned by the breach. The maker of a bond binds himself, his heir, executors, and administrators. The effect of this is to render the heirs liable up to the extent which they inherit from the obligor. It is customary to have one or two sureties to bonds. Sureties are bound the same as the obligee, unless the bond expresses otherwise. They are relieved if the obligee alters the obligation without their consent.

Bonds are used to secure the payment of money, or the performance of some act, or the faithful discharge of the duties of some office, etc.

Bonds are often made with one or two sureties whose names appear as such in the body of the instrument and who sign and seal the bond the same as the principal does, and who thus become liable to pay the bond if the principal does not. Bonds may be witnessed and acknowledged. Though this is not necessary to their validity it is sometimes desirable to have it done.

It may be well to explain here that a bond is an obligation under seal to pay money. It is sometimes used simply to secure the payment of money, like a promissory note is. But it is generally used to secure the doing of some thing else (anything that the obligor may contract to do) *on the penalty* of paying a certain sum of money if the thing is not done. The thing to be done is called the "condition" of the bond. If it is performed the bond becomes void. If the condition is not performed the bond becomes payable; and under the early common law the whole amount of the bond, no matter how large or how greatly in excess of the damages occasioned by the failure to perform the condition, became payable to the obligee. But the courts have in modern times endeavored to mitigate the severity of such a contract, and now the law will allow only a recovery under a bond of such an amount as will indemnify the obligee for the loss and damage he has sustained by reason of the obligor's failure to perform the condition of the bond.

COMMON FORM OF BOND.

KNOW ALL MEN BY THESE PRESENTS, That I,, of, County, and State of, am held and firmly bound unto, of the same place, in the sum of dollars, lawful money of the United States, to be paid to the said, his certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, I do bind myself, my heirs, executors, and administrators, firmly by these presents: sealed with my seal, and dated this day of, A. D. one thousand eight hundred and

The condition of this obligation is such, that if the above-bounden, his heirs, executors, administrators, or any of them, shall and do well and truly pay, or cause to be paid, unto the aforesaid, his executors, administrators, or assigns, the

full and just sum of dollars, lawful money, as aforesaid, with legal interest for the same, on or before the day of next, without fraud or further delay, then this obligation to be void and of none effect, otherwise to be and remain in full force and virtue.

Signed, sealed, and delivered }
in presence of }

[SEAL]

.....,
.....

JUDGMENT BOND.

If a judgment bond be desired, add to the above, after the condition, as follows: And further, I do hereby empower any attorney of any of the Courts of Record, of this State, or elsewhere, to appear for me, and after one or more declarations filed for the above penalty, thereupon to confess judgment, or judgments, against me, as of the then last, next, or any subsequent term, with release of errors, costs of suits, etc.

BOND FOR THE FIDELITY OF A CLERK, TREASURER, CASHIER, TELLER, ETC.

KNOW ALL MEN BY THESE PRESENTS, That we, A. B., of the town of, in the county of and State of, and C. D., of, etc., are held and firmly bound unto E. F., of the town of, in the county of, and State of, merchant, in the sum of dollars, lawful money of the United States, to be paid to the said C. D., his executors, administrators, or assigns, for which payment, well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated this day of, 18...

Whereas, the above named E. F. has employed H. M. as (here insert the position to be held), in their business of.....: Now, the condition of this obligation is such, that if the said H. M. shall well and faithfully (or with honesty and in good faith) discharge his duties as such, and shall also account for all moneys and property, and other things which may come into his possession or under his control therein, then this obligation is to be void, otherwise to remain in full force.

[Signature and seal.]

Signed and sealed in presence of
[Name of witnesses.]

CONDITION OF A BOND OF THE TREASURER OF A COMPANY.

WHEREAS, The above-bounden has been chosen Treasurer of the Company, and by reason thereof will receive into his hands divers sums of money, goods, chattels, and other things, the property of the said Company. Now, therefore, the condition of this obligation is such, that if the said, his executors or administrators, at the expiration of the term of his said office, shall, upon request to him or them made, make and give unto such auditor or auditors, or other officers, as shall thereto be appointed by the said Company, a true and correct account of all such sums of money, goods, chattels, and other things, as have come into his possession, by virtue of his office as Treasurer aforesaid, and shall and do pay over and deliver to his successor in the aforesaid office, or any other person duly authorized to receive the same, all such balances or sums of money, goods, chattels, and other things which shall remain on his hands and be by him due to the said Company, then this obligation to be void, otherwise to be and remain in full force and virtue.

CONDITION OF A BOND TO INDEMNIFY LESSEE ON PAYMENT OF RENT.

THE CONDITION of this obligation is such, that, whereas the above-bound, by indenture of lease bearing date even herewith, hath demised and to farm let unto the said, all that certain messuage or tract of land (describing it), to hold the same to the said for the term of three years, he, the said, yielding and paying therefor the sum of four hundred dollars, in equal quarterly payments for each and every year of the term aforesaid, as in and by the said indenture appears; and whereas a certain claims title to the premises aforesaid with the appurtenances. Now, therefore, if the said shall and do, from time to time, indemnify and save harmless the said, his heirs, executors, and administrators, and his and their goods, chattels, lands and tenements, of and from all actions, suits, costs, charges, payments, and damages, for or by reason thereof, then this obligation to be void, otherwise to be and remain in full force and virtue.

CONDITION OF A BOND OF INDEMNITY TO DISCHARGE ENCUMBRANCES.

THE CONDITION of this obligation is such, that, whereas, the above-bound, by indenture bearing even date herewith, hath granted, bargained, and sold unto the said, a certain massuage or piece of land, situate (describing as in the deed), with

the appurtenances; and whereas the said piece of land is subject to the lien of a mortgage made by the said to, of said, and recorded in the office for recording deeds in said county of, in Mortgage Book ..., page 364, conditioned for the payment by the said, his heirs, executors, and administrators, unto the said, his heirs and assigns, of the sum of dollars, on or before the day of next, together with interest upon the same, as by a reference to said deed of mortgage will more fully appear. Now, therefore, if the said do and shall, on or before the said day of, pay the said sum of five hundred dollars, together with interest and costs, if any, in full, and procure full and complete satisfaction of said mortgage to be entered of record in said office, and do and shall, from time to time, and at all times hereafter, well and sufficiently indemnify and save harmless the said, his heirs, executors, and administrators, of and from the said mortgage, and of and from all suits, payments, costs, charges, and damages, for or by reason thereof, then this obligation to be void and of none effect, otherwise to remain in full force and virtue.

BOND OF INDEMNITY ON PAYING LOST NOTE.

KNOW ALL MEN, etc., (as in Common Bond.) Whereas, the said, on the day of August, 18.., did make, execute, and deliver unto the above-bounden, for a valuable consideration, his promissory note, for the sum of one hundred dollars, written due and payable on or before the day of, then next, with interest, which said promissory note the said, since the delivery of the same to him as aforesaid, has in some manner, to him unknown, lost out of his possession; and whereas, the said hath this day paid unto the said the sum of dollars, the receipt whereof the said doth hereby acknowledge, in full satisfaction and discharge of the said note, upon the promise of the said to indemnify and save harmless the said in the premises, and to deliver up the said note, when found, to the said, to be cancelled. Now, therefore, the condition of this obligation is such, that if the above-bounden, his heirs, executors, or administrators, or any of them, do and shall, at all times hereafter, save and keep harmless the said, his heirs, executors, and administrators, of, from, and against the promissory note aforesaid, and of and from all costs, damages, and expenses, that shall or may arise therefrom; and also deliver, or cause to be delivered up the said note, when found, to be cancelled, then this obligation to be void, else to remain in full force and virtue.

Sealed, etc., (as in common bond.)

BOND OF INDEMNITY FOR TAKING GOODS ON EXECUTION, SOMETIMES REQUIRED BY CONSTABLES AND SHERIFFS.

(As in common form to and including the date, and then as follows):

Whereas, the said, the said O. R. (the constable or sheriff), as constable (or sheriff) as aforesaid, is about to seize and levy upon certain goods and chattels, to wit: (describe the property) by virtue of an execution issued upon a judgment in favor of the said A. B. against C. D., by L. M., Esquire, a justice of the peace of the township of, in the county of, with intent to sell the same, which said property is alleged by the said A. B. to be the property of the said C. D.; and whereas, the said O. R. requires to be indemnified in the premises.

Now, therefore, the condition of this obligation is such, that if the said A. B. shall at all times keep the said O. R. harmless and indemnified from and against all damages, costs, charges, trouble, and expense, of what nature soever, which he may be put to, sustain or suffer by reason of such levy and seizure, or of the subsequent proceedings thereon, then this obligation is to be void, otherwise of force.

[Signatures and seals.]

MONEY BOND.

KNOW ALL MEN BY THESE PRESENTS, That

held and firmly bound unto
in the sum of dollars, to be paid to the said,
or to certain Attorney, Executors, Administrators, or Assigns.

For Which Payment, well and truly to be made, bind and Heirs, Executors and Administrators, jointly, and severally, firmly by these presents.

Sealed this day of, in the year of our Lord one thousand eight hundred and

The Condition of this Obligation is such, That if the above bounden,, Heirs, Executors, Administrators, shall and do well and truly pay or cause to be paid, unto the above named certain Attorney, Executors, Administrators, or Assigns, the sum of

without fraud or delay, then the preceding obligation to be void, otherwise to remain in full force and virtue.

[Signature and seal].

Sealed, and delivered in }
presence of }

NEGOTIABLE BOND OF A CORPORATION.

[*Title of the Corporation.*]

No. \$

This certifies that the Railroad Company has received the sum of one thousand dollars from Y. Z., and in consideration thereof doth hereby promise and agree to pay to him, or to the bearer (or to his assigns), the said sum of one thousand dollars, on the day of, 188—; and also interest on the same at the rate of per centum per annum, on the day of in each and every from the date hereof until the said principal sum shall be paid, upon presentation of the annexed interest warrants, as they severally become payable, at the office of the company, in the city of

In witness whereof, and in pursuance of a resolution of the Board of Directors, passed on the day of,
 [SEAL.] 188., the corporate seal of said corporation is hereto affixed, and these presents duly signed by the President and Treasurer of the said Company this ... day of, 188..

.....
Treasurer......
*President.*FORM OF COUPONS, OR INTEREST WARRANTS, ANNEXED TO
NEGOTIABLE BONDS.

No. \$

The Company promise to pay fifty dollars, semi-annual interest, due on the day of, 188—, upon their bond number, on presentation hereof at their office in the city of [Signature.]

BOND OF TENANT, WITH SURETY, FOR THE PAYMENT OF RENT.

(The penal clause may be the same as in common form.)

WHEREAS, The above named Y. Z., by indenture of lease bearing even date with the above written obligation (or, bearing date the day of) for the consideration in the said lease mentioned, hath demised to the above bounden A. B. certain premises with the appurtenances situate in, for the term of years from thence next ensuing (determinable, nevertheless at the end of the first years of the said term, if the said, his executors, administrators, or assigns, shall give months' notice thereof in manner therein mentioned), at and for the yearly rent of dollars, payable (quarterly) as therein expressed.

Now the condition of this obligation is such, that if the above bounden A. B. and C. D., their heirs, executors or administrators, or any of them, shall, during the continuance of the said lease, well and truly pay, or cause to be paid, to the said Y. Z., his executors, administrators or assigns, the yearly rent or sum of dollars in equal quarter yearly payments, on the days of (designating the month), or within days next after every of the said quarter days, according to the true intent and meaning of the said recited lease (subject, nevertheless, to the determination thereof, in manner as aforesaid), then the above written obligation is to be void; but if default shall be made in any of the said quarterly payments, then this obligation shall remain in full force. [Signatures and seals.]

ADMINISTRATOR'S BOND.

STATE OF MICHIGAN, } ss. *Probate Court for said County.*
County of Wayne.

In the Matter of the Estate of, deceased.

KNOW ALL MEN BY THESE PRESENTS, That we,

..... within the State of Michigan, are holden, and stand firmly bound and obliged unto, Esq., Judge of Probate in and for said County of Wayne, in the full sum of dollars, lawful money of the United States of America, to be paid unto the said, his successors in the said office, or assigns; to the true payment whereof we do bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, for the whole and in the whole, firmly by these presents. Sealed with our seals.

Dated the day of, Anno Domini one thousand eight hundred and eighty-.....

WHEREAS, The above bounden ha.. been appointed by the Probate Court of said County, administrat.... of the estate of late of said County, deceased: *Now the condition of this present Obligation is such*, That if the above bounden shall well and truly perform, observe, and keep the conditions following, to wit:

1st. That he shall make and return to the Probate Court aforesaid, within three months, a true and perfect inventory of all the goods, chattels, rights, credits, and estate of the said deceased, which shall come to possession or knowledge, or the possession of any other person for

2d. That he shall administer according to law, all the goods, chattels, rights, credits, and estate of the said deceased which shall at any time come to possession, or to the possession of any

other person for and out of the same pay and discharge all debts and charges, chargeable on the same, or such dividends thereon as shall be ordered and decreed by the Probate Court aforesaid.

3d. That he shall render a true and just account of administration to the Probate Court aforesaid, within one year, and at any other time when required by such court. And,

4th. That he shall perform all orders and decrees of the Probate Court aforesaid, by the said administrat.... to be performed in the premises. Then this obligation to be void and of no effect, or else to abide and remain in full force and virtue.

Signed, sealed, and delivered
in presence of

}

[L. S.]
[L. S.]
[L. S.]

EXECUTOR'S BOND.

STATE OF MICHIGAN, } ss. *Probate Court for said County.*
County of Wayne.

In the Matter of the Estate of, deceased.

KNOW ALL MEN BY THESE PRESENTS, That we,

..... within the State of Michigan, are holden, and stand firmly bound and obliged unto, Esq., Judge of Probate in and for the said County of Wayne, in the full sum of dollars, lawful money of the United States of America, to be paid unto the said, his successors in the said office, or assigns, to the true payment whereof we do bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, for the whole and in the whole, firmly by these presents. Sealed with our seals.

Dated the day of, Anno Domini one thousand eight hundred and eighty-.....

WHEREAS, The above bounden ha... been appointed by the Probate Court of said County of late of said County, deceased: *Now the condition of this present Obligation is such*, That if the above bounden shall well and truly perform, observe, and keep the conditions following, to wit:

1st. That he shall make and return to the Probate Court aforesaid, within three months, a true and perfect inventory of all the goods, chattels, rights, credits, and estate of the said deceased, which shall come to possession or knowledge, or the possession of any other person for

2d. That he shall administer according to law, and the will of the said testat.... all the goods, chattels, rights, credits, and estate

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of the said deceased which shall at any time come to possession, or to the possession of any other person for, and out of the same pay and discharge all debts, legacies and charges chargeable on the same, or such dividends thereon as shall be ordered and decreed by the Probate Court aforesaid.

3d. That he shall render a just and true account of administration to the Probate Court aforesaid, within one year, and at any other time when required by such court. And,

4th. That he shall perform all orders and decrees of the Probate Court aforesaid, by the said to be performed in the premises. Then this obligation to be void and of no effect, or else to abide and remain in full force and virtue.

Signed, sealed, and delivered }
in presence of }

[L. S.]
[L. S.]
[L. S.]

WAYNE COUNTY, ss.

At a session of the Probate Court in and for said County, holden at Detroit, on the day of, A. D. 188—.

I have examined and do approve of the foregoing bond, and order the same to be filed and recorded in the Probate Office of said County.

.....,
Judge of Probate.

Certificates. The term "certificate" is most commonly applied to the written statement of some fact made by some public officer in an official capacity. Thus a notary makes a certificate of the acknowledgment of a deed, the clerk of a court certifies to the correctness of copies from the court records, etc.

CERTIFICATE OF ACKNOWLEDGMENT BY A NOTARY.

STATE OF MICHIGAN, }
County of ———. } ss.

On this day of, in the year one thousand eight hundred and eighty-....., before me, the subscriber, a notary public in and for said County, personally appeared, to me known to be the same person described in and who executed the within instrument, and acknowledged the same to be free act and deed.

....., *Notary Public,*
..... *County,*
Michigan.

CERTIFICATE TO COPY OF PAPER ON FILE.

STATE OF —, COUNTY OF —, }
Clerk's Office, —, 188—. } **CL.**

I DO HEREBY CERTIFY that I have compared the foregoing copy of a (name the instrument), and of the indorsements thereon, with the original now on file in this office, and that the same is a correct transcript therefrom, and of the whole of said original.

[OFFICIAL SEAL.] In testimony whereof, I have hereunto set my hand and affixed my official seal this
 day of, 188—.

[Signature and title of officer.]

**CERTIFICATE OF COUNTY CLERK AS TO OFFICIAL CAPACITY
 AND AUTHORITY OF NOTARY PUBLIC, ETC.**

STATE OF MICHIGAN, }
County of —. } **CL.**

I,, Clerk of said County, and Clerk of the Circuit Court for the County of, which is a Court of Record, having a seal, do hereby certify that, whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument, and therein written, was, at the time of taking such proof or acknowledgment, a notary public in and for said County, duly commissioned and qualified, and duly authorized to take the same. And further, that I am well acquainted with the hand writing of such notary public, and verily believe that the signature to the said certificate or proof of acknowledgment is genuine. I further certify that said instrument is executed and acknowledged according to the laws of this State.

[SEAL.] In testimony whereof, I have hereunto set my hand and affixed the seal of said court and county, at
, this day of, 188—.

[Signature and title.]

Charter Parties. A *charter party* is a contract of affreightment in writing, by which the owner of a ship or vessel lets the whole, or a part of her, to a merchant or other person, for the conveyance of goods, for a particular voyage, or period of time, in consideration of the payment of freight.

CHARTER PARTY GIVING POSSESSION TO THE HIRER.

THESE ARTICLES OF AGREEMENT, made and entered into this

STATE AGRICULTURAL COLLEGE, LANSING, MICH.

.... day of, A. D. 18..., by and between A. B., of, of the one part, Y. Z., of the city of, of the other part, witnesseth: the said party of first part has this day chartered and hired unto the said party of the second part the steamboat, of, (designating her port), and of the burden of tons, or thereabouts, with all the appurtenances, cables, anchors, chains, etc., which belong to said steamboat, for the term of months from the day of, to be delivered at the port of But in case the said A. B. shall deliver the said boat at any time before said day, the said term shall take date from the time of delivery.

For the use of said steamboat, said Y. Z. agrees and binds himself to pay to the said A. B. . . . dollars, the payments to be made as follows: dollars on the delivery of said boat; dollars on the day of, and dollars at the expiration of said months. And it is further understood, that the said Y. Z. shall be at all the expense of manning and furnishing said boat for the time above stated, and shall return the same to the said A. B. at the port of in as good condition as it now is, with the exception of the ordinary use and wear; and if the said Y. Z. shall at any time fail to fulfill on his part the said A. B. shall have the right to take possession of the said boat wherever the same be found.

In witness whereof, the said parties have hereunto interchangeably set their hands and seals, the day and year above written.

Signed, sealed, and delivered } [Signatures and seals.]
in the presence of }

Chattel Mortgages. A *chattel mortgage* is a transfer of the title to chattels or personal property, with or without possession, as security for a debt or liability, and upon condition that the transfer shall be void if the debt or liability is paid or discharged. The general rules and doctrines governing real estate mortgages apply also to chattel mortgages. (See Chapter VI., page 54.)

CHATTEL MORTGAGE.

KNOW ALL MEN BY THESE PRESENTS, That party of the first part, being justly indebted unto party of the second part, in the sum of dollars, has, for the purpose of securing payment of the said debt and the interest thereof, granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said party of the second part the following goods and chattels, to wit: (carefully describe the articles). To have and to hold the same unto the said party of the second part, executors, administrators, and assigns for-

ever, which said goods and chattels, at the date hereof, are situate at, in the of, County of, State of, and are hereby warranted to be free and clear from all liens, conveyances, incumbrances, and levies (here mention any claims that the mortgage is made subject to). Provided always, and the condition of these presents is such, that if the said party of the first part shall pay or cause to be paid to the said party of the second part the debt aforesaid with interest, at the time, and in the manner following: (here state the time and manner of payment), then this instrument shall be void and of no effect, otherwise to be and remain in full force and virtue. And the said party of the first part hereby agree.. to pay the same at the time and in the manner aforesaid. And if default be made in such payment, either in whole or in part, the said party of the second part is hereby authorized to take possession of and sell at public auction, after (state length of notice required), the goods and chattels hereinbefore mentioned, or so much thereof as may be necessary to satisfy and pay the whole of the said debt, interest, and reasonable expenses, and to retain the same out of the proceeds of such sale, the overplus, or residue, if any, to belong and to be returned to the said party of the first part. And the said party of the second part is hereby authorized at any time when he shall deem himself insecure, to take possession of the said goods and chattels, and the same retain in some convenient place, at the risk and expense of the said party of the first part, until the said debt is fully paid, or the said goods and chattels are sold at auction in the manner hereinbefore specified.

In witness whereof, the said party of the first party has hereunto set his hand and seal the day of, in the year of our Lord one thousand eight hundred and

Signed, sealed, and delivered }	.....	{ L. S. }
in presence of }		
.....,	.....	{ L. S. }
.....		

CHATTEL MORTGAGE, SHORT FORM, WITHOUT WARRANTY.

KNOW ALL MEN by these presents, that I, A. B., of, hereby sell and assign to Y. Z., of, all the tools and materials now in my shop at, This grant is intended as a security for the payment of dollars, with interest, on or before the expiration of from the date hereof, which payment, if duly made, will render this conveyance void.

(Conclude as in preceding form.)

Contracts. See agreements, page 358. See also the first chapter of this book, page 5.

Coroners. The duties of coroners are prescribed in detail by the statutes of the several States. It would be impractical to give forms here, as they might not be of very general application.

Commissioners of Highways. The duties of highway commissioners are also prescribed by statute. They are charged with the general duty of laying out and discontinuing highways. They act usually upon petitions to them presented by interested freeholders. The following forms of petitions may be of use to the general public:

APPLICATION TO LAY OUT A HIGHWAY.

*To the Commissioner of Highways of the Township of,
County of:*

The undersigned, freeholders of the said township of, do hereby make application to you to lay out a highway in a part of said township not included within the corporate limits of any city or village, and respectfully ask that you will proceed to lay out a highway as follows: Commencing at (here insert a description of the route of the proposed highway.)

Dated the day of, A. D.

[To be signed by seven freeholders of the township.]

APPLICATION FOR DISCONTINUANCE OF HIGHWAY.

*To the Commissioner of Highways of the Township of,
County of:*

The undersigned, freeholders of said township of, hereby make application to you, the said commissioner, to discontinue the highway in said township, running as follows: (describe the road to be discontinued), which said highway is not included within the corporate limits of any city or village.

Dated at, the day of, A. D.

(To be signed by seven freeholders of the township.)

(If the application be for an alteration of highway, the above form can be changed accordingly.)

Corporations. Corporations are formed either by virtue of special charters granted by the Legislature of the State or by Congress, or under general laws which have been enacted in most of the States by which voluntary associations are permitted to assume corporate existence for special purposes. Private corporations are almost always formed under these general laws, and their charters or articles of incorporation should conform perfectly with the particular statutes authorizing them. The following forms are drawn so as to have general application, but before making use of any one of them an examination should be made to see that it conforms to the requirements of the local statute.

ARTICLES OF INCORPORATION FOR BUSINESS COMPANY.

STATE OF _____, } ss.
County of _____.

We, the undersigned (naming at least three corporators), do by these presents, pursuant to and in conformity with the act of the Legislature of the State of, passed on the, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," (or whatever the title of the act may be), and the several acts of the said Legislature amendatory thereof, associate ourselves together, and form a body politic and corporate, and do hereby certify:

1. That the corporate name of the said company is (here insert name in full.)

2. That the objects for which the said corporation is formed are as follows: (here state them with precision, but in general terms.)

3. That the capital stock of the said corporation shall be dollars, which shall be divided into shares of dollars each.

4. That the said corporation shall commence on the day of, in the year one thousand eight hundred and, and shall continue in existence for the term of years.

5. That the number of trustees of the said corporation shall be, whose names are as follows, and who shall manage the concerns of the said corporation for the first year. (Names.)

6. That the names of the town and county (or, towns and counties) in which the operations of said company are to be carried on are (here designate them, and if more than one is named, add:) and the principal place of business of the said corporation shall be the of, in the County of and State of

[Signatures.]

ARTICLES OF ASSOCIATION FOR A LITERARY OR SCIENTIFIC CLUB.

The undersigned, residents of the State of, desiring to become incorporated under Act No. ... of the laws of .., as amended, hereby adopt the following Articles of Association:

First—The names of the parties associating in the first instance, and their residences, are as follows (state names and residences of incorporators.)

Second—The name of this association is the Club, and the place where its office for the transaction of business is located, is, and the period for which it is incorporated is thirty years.

Third—The object for which this association is organized is the promotion of the study of political and social science, the collection and dissemination of knowledge concerning the civil and political institutions of the State and Nation, and the establishment and maintenance of a library and reading room wherein may be collected and kept the current political literature of the times, and the standard works bearing upon the general subject of social science.

In witness whereof we have hereunto set our hands this day of, A. D. 188..

[Signatures and incorporators.]

CERTIFICATE OF ACKNOWLEDGMENT TO FOREGOING.

STATE OF _____, }
County of _____. } ss.

On this day of, A. D. 188., before me, the subscriber, a Notary Public in and for said County, personally appeared, to me known to be the same persons described in and who executed the foregoing Articles of Association, and severally acknowledged the same to be their free act and deed, and that they executed the same for the intents and purposes therein named.

.....,
Notary Public.

ARTICLES OF ASSOCIATION FOR A RELIGIOUS CORPORATION.

We, the undersigned, two of the elders (or, church wardens) of the church (or, two of the members of the church, or, of the congregation or, society) hereafter mentioned, hereby certify that, on the day of, 18.., at a meeting of the male persons of full age, belonging to the church (or, congregation, or, society) for the purpose of incorporating the same, which meeting was held at, in the house where they statedly assemble for divine worship, and pursuant to notice duly given, upon the

..... day of, and the day of, at the stated meetings of said congregation for public worship by M. N., the minister, (or, in the absence of the minister, by M. N., one of the elders, or, other officer or member according to the statute) of said church, the undersigned were nominated by a majority of the members present as returning officers; and that said male members did then and there elect, by plurality of voices (naming the trustees, not less than three nor more than nine), as trustees of the said church, congregation or society; and the said persons did then and there also determine by the like plurality of voices, that the said trustees and successors should forever hereafter be called and known by the name or title of (here designate title).

In witness whereof, we have affixed our hands and seals at
....., this day of, 18...

Signed and sealed in } [Signatures and seals.]
the presence of }
[Signature of witness.]

ENGAGEMENT TO TAKE STOCK IN A CORPORATION TO BE FORMED.

The undersigned hereby engage with A. B. & C. D., proprietors of the Bank, and with each other, that they will take the number of shares in the Bank Company proposed to be formed, set opposite their respective names, and pay for them as stipulated.

It is understood that the capital of the said company is to be
..... dollars, in shares, of dollars each.

It is also understood and agreed that the representation to us that the profits of the business, viz.: dollars per annum, shall be sustained by an examination of the books of the present proprietors, or our obligations to take stock are null and void.

[Date.]	[Signatures and number of shares.]
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TRANSFER OF STOCK.

Know all men that I, A. B., of for value received, do bargain, sell, assign, and transfer unto C. D., of, shares of capital stock, standing in my name, on the books of the company; and I do hereby constitute and appoint the said C. D. my true and lawful attorney, irrevocable, in my name or otherwise, but to his own use and benefit, and at his own expense and charges, to take all lawful ways and means for the recovery and enjoyment thereof.

Witness my hand and seal the day of, A. D. 18...
[Signature.] [Seal.]

Signed, sealed, and delivered in the presence of
[Signature of witness.]

PROXY.

Know all men, that I, A..... B....., of, do hereby appoint C..... D....., of, my attorney, for me and in my stead to vote, as my proxy, at any election of the (designate the association and the officers to be voted for), according to the number of votes I would be entitled to cast, if I were then and there present.

Witness my hand and seal the day of, 188..

[Signature and seal.]

Signed, sealed, and delivered in presence of

[Signatures of witnesses.]

Deeds. In the chapter on deeds, page 37, may be found a pretty full consideration of the general requisites of these instruments. It will be well before making use of the forms to read that chapter

A BARGAIN AND SALE DEED.

THIS INDENTURE, made this day of in the year one thousand eight hundred and, between A. B., of, in the county of and State of, farmer (and C. B. his wife), of the first part, and E. F., of in said County, merchant, of the second part: Witnesseth, that the said party (or parties) of the first part, in consideration of the sum of dollars, to him (or them) paid by the said party of the second part, the receipt whereof is hereby acknowledged, has (or have) granted, bargained, and sold, and by these presents does (or do) grant, bargain, and sell unto the said party of the second part, and to his heirs and assigns forever, all (here insert description of premises), together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest (dower and right of dower), property, possession, claim, and demand whatsoever, as well in law as in equity of the said party (or parties) of the first part, of, in, and to the above granted premises, and every part and parcel thereof. To have and to hold all and singular the above named premises, together with the appurtenances and every part thereof unto the said party of the second part, his heirs and assigns, forever.

In witness whereof, the said party (or parties) of the first part has (or have) hereunto set his hand and seal (or their hands and seals) the day and year first above written.

[Signature and seal.]

Signed, sealed, and delivered in presence of

[Signature of witness.]

WARRANTY DEED—LONG FORM.

THIS INDENTURE, made this day of in the year of our Lord one thousand eight hundred and, between of the first part, and of the second part. Witnesseth, that the said part.. of the first part, for and in consideration of the sum of dollars, to in hand paid by the said part.. of the second part, the receipt whereof is hereby confessed and acknowledged, ha.. granted, bargained, sold, remised, released, aliened, and confirmed, and by these presents do grant, bargain, sell, remise, release, alien and confirm unto the said part.. of the second part, heirs and assigns, forever, all th... certain piece or parcel of land situate and being in the of in the County of and State of known and described as follows, to wit: (insert description of the premises), together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, and demand whatsoever, of the said part... of the first part, either in law or equity, of, in, and to the above bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises as above described, with the appurtenances, unto the said part... of the second part, and to heirs and assigns, forever. And the said part... of the first part, formsel heirs, executors, and administrators, do covenant, grant, bargain, and agree, to and with the said part... of the second part, heirs and assigns, that at the time of the ensealing and delivery of these presents, well seized of the premises above described as of a good, sure, perfect, absolute and indefeasible estate of inheritance in the law, in fee simple and that the said lands, hereditaments, and appurtenances are free from all incumbrances whatever, and that the above bargained premises in the quiet and peaceable possession of the said part... of the second part, heirs and assigns, against all and every person or persons lawfully claiming, or to claim, the whole or any part thereof, will forever warrant and defend.

In witness whertof, the said part... of the first part ha.. hereunto set hand.. and seal., the day and year first above written.

	.....,	{ L. S. }
	.....	{ L. S. }
Signed, sealed, and deliv- }	.....,	{ L. S. }
ered in presence of }		
.....,		{ L. S. }
.....	.....,	{ L. S. }

WARRANTY DEED—SHORT FORM.

THIS INDENTURE, made this day of in the year of our Lord one thousand eight hundred and between of the first part, and of the second part. Witnesseth, that the said part... of the first part, for and in consideration of the sum of dollars, to in hand paid by the said part... of the second part, the receipt whereof is hereby confessed and acknowledged, do... by these presents grant, bargain, sell, remise, release, alien, and confirm unto the said part... of the second part, and to heirs and assigns, forever, all certain piece or parcel of land, situate, lying and being in the of in the County of and State of, known and described as follows, to wit: (insert description of premises), together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining. To have and to hold the said premises as described, with the appurtenances, unto the said part.. of the second part, and to heirs and assigns, forever. And the said part... of the first part, for sel..... heirs, executors, and administrators, do ... covenant, grant, bargain, and agree, to and with the said part... of the second part, heirs and assigns, that at the time of the ensealing and delivery of these presents well seized of the above granted premises, in fee simple; that they are free from all incumbrances whatever, and that will, and heirs, executors, and administrators shall warrant and defend the same against all lawful claims whatsoever (here mention any claim that the deed is given subject to).

In witness whereof, the said part... of the first part ha.. hereunto set hand.. and seal.. the day and year first above written.

	-----,	{ L. S. }
	-----,	{ L. S. }
Sealed and delivered }	-----,	{ L. S. }
in presence of }	-----,	{ L. S. }
-----,	-----,	{ L. S. }

FORM OF WARRANTY DEED IN USE IN NEW YORK AND THE MIDDLE STATES.

THIS INDENTURE, made the day of in the year one thousand eight hundred and, between

part... of the first part, and of the second part. Witnesseth, that the said part... of the first part, for and in consideration of the sum of, lawful money of the United States, to in hand paid by the said part... of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, and the said part... of the second part, heirs, executors, and administrators, forever, released and discharged from the same, by these presents ha... granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do... grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said part... of the second part, and to heirs and assigns, forever, all (insert description of the premises), together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also, all the estate, right, title, interest property, possession, claim, and demand whatsoever, as well in law as in equity, of the said part... of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances. To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said part... of the second part, heirs and assigns, to their own proper use, benefit, and behoof forever; and the said for heirs, executors, and administrators, do covenant, grant, and agree to and with the said part... of the second part, heirs and assigns, that the said, at the time of the sealing and delivery of these presents, lawfully seized in of a good, absolute, and indefeasible estate of inheritance in fee simple, of, and in all and singular the above granted and described premises, with the appurtenances and ha.. good right, full power, and lawful authority, to grant, bargain, sell, and convey the same, in manner aforesaid; and that the said part... of the second part, heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said part... of the first part, heirs or assigns, or of any other person or persons lawfully claiming or to claim the same. And that the same now are free, clear, discharged, and unencumbered, of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and encumbrances of what nature or kind soever; and also, that the said part... of the first part, and heirs, and all and every person or persons whomsoever, lawfully or equitably deriving any estate, right, title, or interest, of, in, or to the hereinbefore granted premises, by, from, under or in trust for them, shall and will, at any time or times

hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said part... of the second part, heirs and assigns, make, do, and execute, or cause to be made, done and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law, for the better and more effectually vesting and confirming the premises hereby granted or so intended to be, in and to the said part... of the second part, heirs and assigns forever, as by the said part... of the second part, heirs or assigns, or their counsel learned in the law, shall be reasonably advised or required; and the said heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said part... of the second part, heirs and assigns, against the said part... of the first part, and heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

In witness whereof, the said part..... hereunto set..... hand... and seal... the day and year first above written.

Sealed and delivered in the presence of

CERTIFICATE OF ACKNOWLEDGMENT OF ABOVE.

STATE OF,
 OF,
County of } ss.

On the day of in the year one thousand eight hundred and, before me personally came to be the individual described in, and who executed the foregoing instrument, and acknowledged that he executed the same.

A DEED POLL OF WARRANTY, IN USE IN NEW ENGLAND.

KNOW ALL MEN BY THESE PRESENTS, That I (insert grantor's name), of (insert town, County and State), in consideration of (insert amount paid), to me paid by (insert grantee's name), of (give grantee's residence), the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said (grantee) the following described premises, to wit: (insert accurate and complete description of the property conveyed). To have and to hold the above granted premises to the said (insert grantee's name) his heirs and assigns, to his use and behoof forever. And I, the said (insert grantor's name), for myself, and for my heirs, executors, and administrators do covenant with the said

(insert grantee's name), and with his heirs and assigns, that I am lawfully seized in fee simple of the aforegranted premises; that the same are free from all incumbrances (if there be any incumbrance subject to which the premises are bought, as a mortgage or a lien or right of way, etc., add the word excepting, and then describe the incumbrance); that I have good right to sell and convey the same to the said (insert grantor's name), and to his heirs and assigns forever as aforesaid; and that I will, and my heirs, executors, and administrators shall warrant and defend the same to the said (insert grantee's name), and his heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof, I, the said (insert grantor's name) and (insert his wife's name), wife of said (grantor) in token of her release of all right and title of and to dower in the said premises, have hereunto set our hands and seals this day of, A. D. 188..

Signed, sealed, and delivered } [SEAL.]
 in presence of } [SEAL.]

COMMONWEALTH OF } ss.
 County of

On this day of, A. D. 188., personally appeared before me, a justice of the peace in and for said County, the above named, to me known as the persons who executed the above instrument and acknowledged the same to be their free act and deed before me.

.....
Justice of the Peace.

QUIT-CLAIM DEED—LONG FORM.

THIS INDENTURE, made the day of, in the year of our Lord one thousand eight hundred and between of the first part, and of the second part, Witnesseth, that the said part... of the first part, for and in consideration of the sum of, to in hand paid by the said part... of the second part, the receipt whereof is hereby confessed and acknowledged, do... by these presents grant, bargain, sell, remise, release, and forever quit claim unto the said part... of the second part and to heirs and assigns, forever (insert description of property), together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining; to have and to hold the said to the said part... of the second part, and to heirs and assigns, to the sole and only proper use, benefit and behoof of the said part... of the second part heirs and assigns, forever.

In witness whereof, the said part... of the first part ha... here-
unto set hand and seal the day and year first above written.
Signed, sealed, and delivered } [L. S.]
in presence of } [L. S.]

CERTIFICATE OF ACKNOWLEDGMENT TO FOREGOING.

STATE OF, } ss.
County of }
On this day of, one thousand eight hundred
and, before me, in and for said County, per-
sonally came the above named, known to me to be
the person who executed the foregoing instrument, and acknowl-
edged the same to be free act and deed.
[Signature and title of acknowledging officer]

QUIT-CLAIM DEED WITH WARRANTY AGAINST THE GRANTOR'S
OWN ACTS

This deed is the same in form as the preceding one, except that
it contains the following clause, which should be inserted just
before the attestation:

And the said A. B. for himself, his heirs, executors, and admin-
istrators, does hereby covenant, promise, and agree to and with the
said party of the second part, his heirs and assigns, that he has not
made, done, committed, executed, or suffered any act or acts, thing
or things whatsoever, whereby or by means whereof, the above
mentioned and described premises, or any part or parcel thereof,
now are, or at any time hereafter, shall or may be impeached,
charged, or encumbered, in any manner or way whatsoever.

Where a homestead right is to be released by the wife a para-
graph like the following should be inserted just before the clause
commencing "In witness whereof:"

"And I (name the wife), wife of the said (name the grantor),
in consideration of one dollar to me paid by the said (name
grantee), the receipt whereof is acknowledged, do hereby release
and assign to the said (name the grantee) and his heirs and assigns
all my right, interest, claim, and estate in and to the premises above
granted, under the homestead laws of this State, or any other
statutory provisions thereof."

Where it is required that the wife shall acknowledge the deed
separate and apart from her husband, a form of acknowledgment
like the following may be used:

STATE OF, }
 County of } ss.

On this day of, in the year one thousand eight hundred and, before me, the subscriber, a in and for said County, personally appeared, to me known to be the same person.. described in and who executed the within instrument, who acknowledged the same to be free act and deed. And the said, on a private examination by me, separate and apart from said husband, acknowledged that executed the same freely, without any fear of, or compulsion from any one.

.....,

**ATTESTATION OF A DEED IN WHICH ERASURES OR INTER-
 LINEATIONS APPEAR.**

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

Sealed and delivered in the presence of [the word "seven" on the first page was erased, the words "be the same more or less" written over an erasure on the third page, and the words "dower and right of dower" cancelled on third page before execution.]

[Signature.] [SEAL.]

[Signatures of witnesses.]

DEED BY A CORPORATION.

This indenture, made this day of in the year one thousand eight hundred and, between the (insert the legal title of the corporation), of parties of the first part, and E. F., of the same place, party of the second part, witnesseth, that the said parties of the first part, in consideration of the sum of dollars (thence proceeding as in other deeds to the covenants, each of which will begin thus:) And the said parties of the first part (or name the corporation), for themselves and their successors, do covenant (etc., continuing as in other cases).

In witness whereof the said parties of the first part have hereunto caused their corporate seal to be affixed and these presents to be subscribed by (insert president, cashier, or officer, as the corporation may order).

[Corporate seal.]

[Signature of officer.]

DEED BY ATTORNEY.

This indenture, made the day of in the year of our Lord one thousand eight hundred and, between A. B., of, County of and State of, and C. B., his wife, of the first part, by E. F., their attorney in fact, specially thereto constituted by power of attorney, dated the day of, 18.., and recorded in (reciting the proper office), as by reference thereto will more fully appear, and E. J., of, County of and State of, of the second part, witnesseth, etc. (proceeding as in foregoing, and concluding as follows):

In witness whereof, the said parties of the first part, by E. F., their attorney in fact, have hereunto set their hands and seals the day and year first above written.

Signed, etc.,

A. B. [SEAL.]

C. D. [SEAL.]

By E. F., their attorney.

DEED OF GIFT.

THIS INDENTURE made this day of, one thousand eight hundred and, between A. B., of, in the County and State of (and C. B. his wife), of the first part, and E. J. B., of the same place, son of the said A. B., of the second part: Witnesseth, that the said A. B., for and in consideration of the natural love and affection which he has unto the said E. J. B., by these presents does give, grant, alien, enfeoff, and confirm unto the said E. J. B., his heirs and assigns, forever, all (here insert description of the premises): Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right (dower and claim of dower), title, interest, property, claim, and demand whatsoever, of the said party (or parties) of the first part, of, in, and to the said premises, with the appurtenances, and every part thereof. To have and to hold all and singular the above-granted premises, with the appurtenances, unto the said E. J. B., his heirs and assigns, forever.

In witness whereof the party (or parties) of the first part has (or have) hereunto set his hand and seal (or their hands and seals), the day and year above written.

[Signatures and seals.]

Signed, sealed, and delivered }
in presence of }
[Signature of witnesses.]

TRUST DEED.

THIS INDENTURE made the day of, in the year one thousand eight hundred and, between A. B., of, in the County of, and State of, (and C. B. his wife), of the first part, and C. D., of, in the said County, as trustee for of the second part, witnesseth: that the said party (or parties) of the first part, in consideration of the sum of dollars to him (or them) paid by the said party of the second part, the receipt whereof is hereby acknowledged, has (or have) granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does (or do) grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns, forever, all (here insert description).

To have and to hold all and singular the above-granted premises, together with the appurtenances and every part thereof, unto the said party of the second part, his successors and assigns, forever, in fee, upon the trusts, nevertheless, and to and for the uses, interests, and purposes hereinafter limited, described, and declared—that is to say, upon trust to receive the issues, rents, and profits of the said premises, and apply the same to the use of E. F., during the term of his natural life, and, after the death of the said E. F., to convey the same by deed to S. T., in fee.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

[Signatures and seals.]

Signed, sealed, and delivered }
in presence of }
[Signature of witness.]

DEED OF A RIGHT OF WAY.

THIS INDENTURE made this day of, in the year, between A. B., of, County of and State of, part.. of the first part, and C. D., of, party of the second part: Witnesseth, that the said A. B. for and in consideration of the sum of dollars, lawful money of the United States, unto him well and truly paid by the said C. D., at and before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and does grant, bargain, and sell unto the said C. D., his heirs and assigns, the free and uninterrupted use, liberty, and privilege of, and passage in and along a certain alley or passage, of ten feet in breadth by one hundred feet in depth, extending out and from (describing the direction

of the way). Together with free ingress, egress, and regress to and for the said C. D., his heirs and assigns, and his and their tenants, under-tenants (if, for a carriage-way, here add, "with carts, vehicles, carriages, horses, or cattle, as by him or them shall be necessary and convenient") at all times and seasons forever thereafter, into, along, upon, and out of the said alley or passage-way, in common with him, the said A. B., his heirs and assigns, and his and their tenants or under-tenants.

To have and to hold all and singular the privileges aforesaid to him the said C. D., his heirs and assigns, to the and their only proper use and behoof, in common with him, the said C. D., his heirs and assigns, as aforesaid. (Here add, if desired, "Subject, nevertheless, to the moiety or equal half part of all necessary charges and expenses, which shall, from time to time, accrue in paving, amending, repairing, and cleansing the said alley or passage-way.")

In witness whereof I have hereunto set my hand and seal this day of, 18..

Signed, sealed, and delivered }
in presence of

A. B.

[Signatures of witnesses.]

EXECUTOR'S, ADMINISTRATOR'S, OR GUARDIAN'S DEED.

KNOW ALL MEN BY THESE PRESENTS, That (insert name of executor, administrator, or guardian and the name of the estate for which he acts), pursuant to an order of the Judge of the Court of Probate for the County of and State of, held at the probate office in the in said County and State, on the day of in the year of our Lord one thousand eight hundred and, authorizing, empowering, and licensing him to sell at public auction, in conformity to the statute in such case made and provided, sufficient of the real estate whereof said (name of deceased or ward) was seized, for the purpose in said order mentioned, did sell at public auction, held at, in the of in the County of and State aforesaid, pursuant to legal notice, all the estate, right, title, and interest of said, in and to certain real estate and premises in said order set forth and hereinafter described, to (name of purchaser), he being the highest bidder therefor, which said sale was made by an order of said Judge of Probate, on the day of, in the year one thousand eight hundred and seventy-. . . ., duly confirmed, and the said directed therein to execute, acknowledge, and deliver a proper conveyance or conveyances of said real estate so sold, to the purchaser thereof, agreeably to the statute in such case made and provided.

Now know ye, that in pursuance of said several orders, and proceedings above referred to, and in consideration of the sum of dollars, paid to me by said (name of purchaser), the receipt whereof I do hereby acknowledge, have sold, and do hereby give, grant, sell, and convey unto the said (name of purchaser), his heirs and assigns, forever (insert description of the premises); to have and to hold the above granted premises, with the appurtenances, to the said, his heirs and assigns, forever. And do hereby covenant with the said that will warrant and defend the said granted premises, with the appurtenances unto the said heirs and assigns, forever, against the lawful claims and demands of all persons claiming by, from or under, but against no other persons.

In testimony whereof, have hereunto set hand and seal at, in the County of and State aforesaid, this day of, A. D. one thousand eight hundred and seventy-.....
 Signed, sealed, and delivered } [L. S.]
 in presence of } [L. S.]

CERTIFICATE OF ACKNOWLEDGMENT TO FOREGOING.

STATE OF, } ss.
 County of

On this day of, A. D. one thousand eight hundred and, before me, a in and for said County, personally came the above named, known to me to be the person who executed the foregoing instrument, and acknowledged the same to be free act and deed, as executor (guardian or administrator) of as in said instrument described.

[Signature and title of acknowledging officer.]

Depositions. See affidavits.

Divorce. Divorce is absolute or limited. Absolute divorce is a total dissolution by law of the marriage relation. Limited divorce is a legal separation which leaves the parties with none of the rights of marriage. It grows less frequent as the laws of divorce grow more liberal. Divorce is granted in all of the States for adultery, and also for impotency where it existed at the time of the marriage. The other causes for divorce are not the same in the several States. Generally willful desertion for more than two

years, habitual and long continued drunkenness, extreme and long practiced cruelty and the conviction of an infamous crime are made causes for divorce.

The forms relating to the subject would not be of general use, and are therefore omitted.

Dower. See pages 16 and 258. Blank forms for use in assignment of dower, etc., can usually be got at the probate offices.

Drafts. See Bills of Exchange and Promissory Notes.

Division Fences. See Fences and Fence Viewers.

Easements. See Chapter XI., page 88.

Estrays. The statutes of the States generally provide simple proceedings for the disposal of straying domestic animals. See Chapter XIV., page 127.

NOTICE TO TOWNSHIP CLERK, OF FINDING A STRAY ANIMAL.

To the Township Clerk of the County of:

Notice is hereby given, that on or about the day of , A. D. . . . , one black horse, of the age of six years or thereabouts, and marked with a white star in the forehead, strayed upon my inclosed land in the said township of , and now remains there-upon, and that I reside in the said township of

Dated this day of , A. D. A. B.

NOTICE OF SALE WHERE ESTRAY IS NOT REDEEMED.

By virtue of the statute in such case made and provided, I shall expose to sale at public auction, to the highest bidder, on the day of instant (or next), at o'clock in the noon, at the house of R. F., in , one chestnut horse of the age of seven years, or thereabouts, and marked with a star in his forehead, the same being a stray found upon my inclosed land in the town of , and remaining unredeemed according to law.

Dated the day of , 18.. A. B.

Fences and Fence Viewers. See Chapter XVI., page 142. This matter is regulated entirely by statute. The following forms are adapted to the statutes of Michigan, but will be found applicable by slight modification to those of many other States:

**COMPLAINT TO FENCE VIEWERS OF NEGLECT OR REFUSAL TO
REPAIR OR REBUILD PARTITION FENCE.**

*To B. O. and A. S., two of the Fence Viewers of the Township
of*

The undersigned, A. B., of said township, makes complaint and says that this complainant and C. D., of the same township, are occupants of adjoining lands therein, and that a partition fence has been constructed on the line between said lands, which are inclosed by the occupants thereof respectively, and that of right the said C. D. ought to maintain that portion of said partition fence on said line described as follows, to wit: (describing the same), that such portion of said fence has become decayed, broken down and out of repair, and ought to be rebuilt or repaired by the said C. D., but that he, the said C. D., hath neglected and still doth neglect to repair or rebuild the same, whereby this complainant is aggrieved, and he therefore prays that you, the said fence viewers, will proceed to examine and determine the same, after due notice to the said C. D., as required by law.

Dated this day of, A. D.

A. B.

DETERMINATION OF FENCE VIEWERS ON COMPLAINT.

WHEREAS, Complaint has been made to the undersigned, two of the fence viewers of the township of, in the county of, by A. B., of said township, setting forth that he, the said complainant, and C. D., of the same township, are occupants of adjoining lands therein, and that a partition fence has been constructed on the line between said lands, which are inclosed by the occupants thereof respectively, and that of right the said C. D. ought to maintain that portion of said partition fence on said line described as follows, to-wit: (describing it as in the complaint), and that such portion of said fence has become decayed, broken down and out of repair, and ought to be rebuilt or repaired by the said C. D., but that the said C. D. hath neglected, and still doth neglect to repair or rebuild the same, whereby he, the said A. B., is aggrieved, and praying that we, the said fence viewers, would proceed to examine and determine the same, after due notice to the said C. D., as required by law; and we having thereupon given notice to both of said parties that we would proceed to examine the same on the day of, at nine o'clock in the forenoon; and, whereas, on the day and year last aforesaid we were attended by the said A. B. and C. D., (or as the fact may be), and did proceed to examine that portion of the said partition fence hereinbefore described, and found the same to be decayed, broken down and out of repair: now, therefore, we do determine accordingly, and that

the same ought to be rebuilt or repaired, and we do hereby direct the said C. D. to rebuild or repair the same within days from the date thereof.

In testimony whereof, we have hereto subscribed our names, this day of, A. D.

A. S., } *Fence Viewers.*
B. O., }

CERTIFICATE OF VALUE OF REBUILDING OR REPAIRING PARTITION FENCE.

We, the undersigned, two of the fence viewers of the township of, in the county of, having heretofore, on the complaint of A. B., examined that portion of the partition fence between the lands occupied by the said A. B. and C. D., respectively, in said township, and having determined the same to be out of repair, and to require repairing or rebuilding, and having certified the same to the said C. D., on the day of, and directed him to repair or rebuild the same within days from that date; and he, the said C. D., having neglected so to do, and the said A. B. having since the expiration of said last mentioned time rebuilt (or "repaired") the same, we do, upon inspection thereof, adjudge the said fence so rebuilt (or "repaired") as aforesaid, to be good and sufficient, and we hereby certify that we have ascertained the value of such repairing (or "rebuilding") by the said A. B., to be the sum of dollars, and that the fees for our services in the premises amount to dollars.

Given under our hands this day of, in the year

A. S., } *Fence Viewers.*
B. O., }

ASSIGNMENT BY FENCE VIEWERS OF SHARES OF DIVISION FENCE TO BE ERECTED OR REPAIRED BY OCCUPANTS.

A. B. and C. D., being the occupants of certain adjoining lands in the township of, in the county of, and disagreeing concerning the respective portions of a division fence to be made (or "kept in repair") by them respectively, and we, the undersigned, two of the fence viewers of the said township, having been applied to by them for that purpose, (or "having been applied to by the said A. B. for that purpose, and having given due notice to the said A. B. and C. D. of our present meeting for the determination thereof,") do hereby certify that we have examined the premises, and heard the allegations of the said parties, (*) and after due deliberation thereon have determined, and do hereby deter-

mine, that the said division fence be built as follows, to wit: (insert description), and that one-half of said fence, on the east end of said division line is the proper portion thereof to be built (or "to be repaired and kept in repair") by the said A. B., and that the remainder of said fence is the proper proportion thereof to be built (or "repaired and kept in repair") by the said C. D. And we do hereby direct that each of the said parties build (or "repair") his proportion of said fence within months from this date. And we further certify that our fees for our services herein amount to the sum of dollars.

Given under our hands, this day of, A. D.

L. P., } *Fence Viewers.*
R. S., }

APPRAISEMENT OF FENCE WHEN ONE OCCUPANT HAS BUILT MORE THAN HIS SHARE.

(As in preceding form to the (*), and then as follows):

And it appearing to us that the said C. D. had, before any complaint made to us, voluntarily erected (or "become the proprietor of") the whole of the said division fence (or "more than his just share of said division fence"), we do hereby certify that we have ascertained and determined the value of said division fence so built by said C. D., over and above his just share thereof, to be the sum of dollars, which sum is to be paid by the said A. B. to him, the said C. D., on account thereof.

Given under our hands, this day of, A. D.

L. P., } *Fence Viewers.*
R. S., }

NOTICE TO PARTIES OF MEETING OF FENCE VIEWERS TO DETERMINE CONTROVERSY.

To A. B. and C. D.:

The said A. B., having made complaint to the undersigned, two of the fence viewers of the township of, in the county of, that the said C. D. has neglected and refused to rebuild or repair his proportion of the division fence between the lands occupied by you respectively, which he alleges to be out of repair, and having required us to view the same, and determine the matter of said complaint; now, therefore, you are hereby notified that we will meet for that purpose at the place where the said fence is situated, on the day of next (or "instant"), at o'clock in the forenoon.

Dated this day of, A. D.

L. P., } *Fence Viewers.*
R. S., }

**DETERMINATION OF FENCE VIEWERS WHERE LAND IS DIVIDED
BY WATER.**

WHEREAS, A. B., of the township of, in the County of, hath applied to the undersigned, two of the fence viewers of said township, to view the brook (or "river," or "pond," or "creek," as the case may be,) which divides the land of the said A. B. from the land of the said C. D., and determine whether the same answers the purpose of a sufficient fence, and if not, and if it should be impracticable, without unreasonable expense, to build a fence on the true boundary line between said parties, then to determine how, or on which side thereof such fence shall be set up and maintained, or whether partly on one side and partly on the other; and whereas, after due notice to the said A. B., and C. D., we have, on this day of, A. D., proceeded to examine the premises, and have found and determined that the said brook (or "river," etc.) does not answer the purpose of a sufficient fence, and that it is impracticable, without unreasonable expense, to build a fence on the true boundary line between the lands of the said parties, we do therefore determine that the said division fence be built (state how, or on which side, or whether partly on one side and partly on the other, with sufficient particularity so that its location can be easily ascertained). And we do hereby certify that our fees for our services herein amount to dollars.

Given under our hands this day of, A. D.

A. L., } *Fence Viewers.*
B. O., }

DIVISION OF LINE BETWEEN LANDS OCCUPIED IN COMMON.

[In case of a disagreement between parties owning lands in severalty, which have been occupied in common, the proportion of partition fence to be built by each may be determined by fence viewers, and their determination will be substantially as in the form of assignment of shares of division fences generally.]

**DETERMINATION OF VALUE OF ONE-HALF OF PARTITION FENCE
WHEN UNINCLOSED LANDS HAVE BEEN INCLOSED.**

WHEREAS, A. B. and C. D., being the owners of certain adjoining lands in the township of, in the county of, and the said A. B. having, on or about the day of, A. D., erected a division fence between the land belonging to him and that of the said C. D., who allowed his own lands to lie open; and, whereas, the said C. D. has recently inclosed the said land

NOTICE OF INTENTION NOT TO IMPROVE LANDS ADJOINING
PARTITION FENCE.

To C. D.:

You are hereby notified that I have determined not to improve any part of my lands adjoining the partition fence between our adjoining lands in the township of, in the County of, which said fence has been divided by two of the fence viewers of the said township (or "by agreement in writing between us").

Dated this day of, A. D.

Yours, etc.,

A. B.

Foreclosure. Mortgages are foreclosed either by a proceeding in the Court of Chancery, or by *advertisement* under the provisions of the local statute where the mortgage contains a power of sale. See Chapter VI., page 65. The following form of advertisement will be found adaptable to the statutes of many of the States:

MORTGAGE SALE.

Whereas, default having been made in the conditions of a certain mortgage made and executed on the thirtieth day of November, A. D. 1877, by Frederick Klatte and Margaretta Klatte, his wife, of Wayne County, Michigan, to Collins B. Hubbard, of same County and State, which mortgage was recorded in the office of the Register of Deeds for Wayne County, Michigan, on December 24th, 1877, in Liber 136 of Mortgages, on page 303. And whereas, the amount claimed to be due and unpaid on said mortgage at the date of this notice is the sum of two thousand one hundred and eight dollars and thirty-six cents (\$2,108.36) principal and interest, and an attorney's fee of \$50, as provided in said mortgage. And whereas, no suit or proceeding at law or in equity has been instituted to recover the debt secured by said mortgage, or any part thereof;

Now, therefore, notice is hereby given that by virtue of the power of sale contained in said mortgage, and in pursuance of the statute in such case made and provided, the said mortgage will be foreclosed by a sale of the premises therein described, at public auction to the highest bidder, at the easterly front door of the City Hall, of the city of Detroit (that being the building in which the Circuit Court for the County of Wayne is held), on the twenty-seventh day of August, 1884, at 12 o'clock noon. Said premises are described as follows. All that parcel of land situated in the township of Greenfield, Wayne County, Michigan, known as the

east half of the southwest quarter of section five (5) in town one (1), south of range eleven (11) east, containing eighty (80) acres more or less.

HENRY A. HAIGH,
Attorney for Mortgagees.

COLLINS B. HUBBARD,
Mortgagee.

Detroit, May 27, 1884.

Guaranty. A guaranty is an undertaking to answer for another's liability, and is collateral thereto, or, in other words, it is a contract by which one person is bound to another for the fulfillment of a promise or engagement of a third party. It differs from a warranty, which is given in reference to the title, quality, or quantity of a thing sold. No special words are necessary to constitute a guaranty. If the party clearly shows that it is his intention to guaranty, it is sufficient.

In order that the guarantor may be held, the guaranty should be in writing, signed by him. If the guarantor pays his principal's debt he is entitled to all the securities of the creditor.

The conditions of the guaranty must be strictly followed, otherwise the guarantor will not be held.

The guaranty must be founded on a consideration, otherwise it is of no force.

It is a sufficient consideration if the party for whom the guaranty is given derives a benefit, or the party to whom it is given suffers an injury, because of his acting on the faith of the guaranty. No consideration need pass from the party receiving the guaranty to the guarantor. The agreement of both parties is necessary to make a guaranty binding on the guarantor. The guarantor can be held only for the amount agreed upon, or for the time mentioned in the guaranty.

If the principal fails to pay the debt, the guarantor should be notified. A guaranty is always revocable until it has been acted upon.

GUARANTY OF PAYMENT OF NOTE.

For value received, I hereby guarantee the payment of the within note.

[Date.]

[Signature.]

GUARANTY OF PAYMENT OF BOND.

In consideration of the sum of one dollar to me in hand paid by C. D., I hereby guarantee the payment of the foregoing bond.

Witness my hand (and seal), the day of, 18..

[Signature, with or without seal.]

GUARANTY OF RENT TO BE ATTACHED TO A LEASE.

In consideration of the letting of the premises above mentioned to the above named A. B., and of the sum of one dollar to me paid by the said party of the first part, I do hereby covenant and agree, to and with the party of the first part above named, and with his legal representatives, that if default shall at any time be made by the said A. B. in the payment of the rent and performance of the covenants above contained on his part to be paid and performed, that I will well and truly pay the said rent, or any arrears thereof that may remain due unto the said party of the first part, and also all damages that may arise in consequence of the non-performance of said covenants, or either of them, without requiring notice of any such default from the said party of the first part.

Witness my hand and seal this day of, in the year of our Lord one thousand eight hundred and

[Name of witness.]

[Signature.]

GUARANTY OF COLLECTIBILITY, ETC.

For value received, I hereby guarantee that the within is good (or, collectible).

[Signature.]

Highways. See Chapter XIII., page 112. The forms relating to highways are for use mainly by highway officials, and are not therefore of service to the general reader. Some will be found under the title "Commissioner of Highways," page 411. The following will show the general style of these forms:

RELEASE OF DAMAGES BY OWNER OF LAND.

For and in consideration of one dollar to me paid, and hereby acknowledged, I, M. A., of the township of, Michigan, do hereby consent that a highway, running as follows: (here describe the route) may pass over the following described lands and premises owned by me; (describe the lands, etc.) And I do

hereby release to said township of, all claim to damages by reason of said highway running through my land and premises as aforesaid.

Witness my hand and seal, this day of, A. D. 18..
M. A. [L. s.]

(This is usually to be filed in the office of the township clerk, and should be recorded by him).

NOTICE TO PERSON IN FAULT TO REMOVE BUILDING IN PROCESS OF MOVING.

To A. B.:

SIR—You are hereby notified and required to remove the building, now in process of moving, from the highway, which is now obstructed thereby, to wit: (describing the highway) within two days after service of this notice, and in default thereof, you will be liable to a penalty of five dollars per day for each and every day thereafter that said building shall remain unremoved.

Dated this day of, A. D.

R. . . . S. . . .,
Commissioner of Highways of the Township of

NOTICE TO TOLL ROAD COMPANY TO REPAIR ROAD.

To the Company:

You are hereby notified that a portion of your plank road (or "gravel road," or, as the case may be), has become defective and out of repair, to wit: that portion thereof (describing it), and that you are required to repair the same within thirty days from the receipt of this notice, and that in default thereof you will be liable to a penalty of fifty dollars.

Dated this day of, A. D.

R. . . . S. . . .,
Commissioner of Highways of the Township of

NOTICE BY OVERSEER TO OWNER OR POSSESSOR OF LAND, TO CAUSE CANADA THISTLES TO BE CUT.

To O. P.:

You are hereby notified that Canada thistles are now growing and in danger of going to seed on the land owned (or "possessed" or "occupied") by you in the township of, that is to say, on the (describing the place with sufficient certainty), and you

are hereby required to cause the same to be cut down within five days from the service on you of this notice.

Dated this day of, A. D.

A.... B....,
Overseer of Highways of District No.

**OVERSEER'S LIST OF PERSONS LIABLE TO WORK ON THE
HIGHWAYS.**

COUNTY OF, }
Township of } ss.

I, G. H., overseer of highways for road district number, of the said township, do hereby certify that the following is a true and correct list of all the inhabitants who are liable to work on highways in said road district number, viz.:

G. M., H. C., W. T. Y.,
H. S., J. B., A. E.

Dated the day of, A. D.

G.... H....,
Overseer of Highways.

Horses. See pages 219 and 232. The only blank form likely to be needed in connection with horses is that for a warranty of soundness, or other warranty. The warranty may be readily included in the receipt for the purchase price, as follows:

RECEIPT WITH WARRANTY.

New York, Nov. 10, 1884.

Received of William Wilson two hundred and fifty dollars for gray mare Jennie, seven years old, and warranted sound, kind, and true in all harness, and free from vices.

(Signed), J. B.

RECEIPT WITH QUALIFIED WARRANTY.

New York, Nov. 10, 1884.

Received of John Williams one hundred and twenty-five dollars for bay mare, nine years old, and warranted sound in every way, except a quarter-crack in one foot.

(Signed), A. B.

ANOTHER.

New York, Nov. 12, 1884

Received of John Jones seventy-five dollars for roan horse Dick, twelve years old. Said horse has recently recovered from an attack of Pink Eye, and I warrant him for one month against a return of the disease, and also warrant him kind and true in all harness.

(Signed),

J. B.

Leases. See Chapter on Landlord and tenant, page 244.

LEASE OF A FARM FOR A TERM OF YEARS.

THIS INDENTURE, made the day of, in the year of our Lord one thousand eight hundred and, between, of, County of and State of, of the one part, and, of the same place, of the other part, witnesseth: that the said, for and in consideration of the yearly rent and covenants hereinafter mentioned and reserved, on the part and behalf of the said, his heirs, executors, and administrators, to be paid, kept and performed, hath demised, set, and to farm let, and by these presents doth demise, set, set, and to farm let, unto the said, his heirs and assigns, all that certain messuage or tenement, tract, piece or parcel of land, situate in aforesaid, adjoining lands of (naming the owners of the adjoining tracts), and now in the tenure and occupancy of, (or, as the case is), containing acres, be the same more or less, (or, if preferred, describe the premises by metes and bounds as in a deed), together with all and singular the buildings, improvements, and other the premises hereby demised, with the appurtenances. To have and to hold the same unto the said, his heirs and assigns from the day of ensuing the date hereof, for and during the term of years, thence next ensuing, and fully to be completed and ended; the said yielding and paying for the same unto the said, his heirs and assigns, the yearly rent or sum of dollars, on the day of, in each and every year during the term aforesaid, the first payment of which said yearly rent or sum of is to be made on the first day of, A. D. 18... (If the rent is payable in produce, after the words "yielding and paying," proceed as follows: "thereout unto the said, his heirs and assigns, for the yearly rent as follows: one-half of all the winter grain, one-third of all the summer grain, raised and growing upon the premises, etc.," following the agreement.) And, at the expiration of the said term, he, the said, his heirs and

assigns, shall and will quietly and peaceably surrender and yield up the said demised premises, with the appurtenances, unto the said, his heirs and assigns, in as good order and repair as the same now are, reasonable wear, tear, and casualties which may happen by fire or otherwise only excepted.

In witness whereof, the said parties have hereunto set their hands and seals, the day and year aforesaid.

Signed, sealed, and delivered	}	.....	{ L. S. }
in presence of			
.....	}	.....	{ L. S. }
.....			

LEASE WITH CHATTEL MORTGAGE SECURITY.

THIS INDENTURE, made this day of, A. D. 18. . . , between of of the first part, and of of the second part, witnesseth as follows, to wit: The party of the first part does hereby demise and let unto the party of the second part, the premises known and described as follows (insert description), together with all the buildings and appurtenances thereunto belonging, for and during the term of . . . years, commencing on the . . . day of . . . , A. D. 18. . . , and ending on the . . . day of . . . , A. D. 18. . . ; the party of the second part yielding and paying therefor the yearly rent of . . . , dollars, as hereinafter specified.

And the party of the second part does hereby covenant and agree to and with the party of the first part to pay the said rent in the manner and at the times following to wit: (State the times of payment as agreed upon.) And further, to deliver up the said land, buildings, and appurtenances at the end of the said term, peaceably, and in as good condition as at present, reasonable wear and damage by the elements excepted.

And further, that he will not sublet the said land, or any part thereof, nor assign the lease thereof, without the consent in writing of the party of the first part.

And it is mutually agreed by the parties hereto, that in case the party of the second part shall make default in any of the foregoing covenants, then the party of the first part may re-enter the said land and take possession of the same with its buildings and appurtenances. And the party of the second part, in consideration of the premises and of one dollar to him in hand paid by the party of the first part, has granted, bargained, and sold, and by these presents does, grant, bargain, and sell unto the party of the first part, the following goods and chattels, to wit: (describe the chattels to be mortgaged,) which said goods and chattels are now in the possession of the party of the second part, at (state where).

Provided however, That if the party of the second part shall well and truly perform and fulfil all and singular the covenants hereinbefore contained on his part to pay moneys, either for rent, taxes, repairs, improvements, or for any other purpose or account whatsoever, then this conveyance be void. But in case he shall fail to perform the said covenants, or any of them, then the said conveyance shall be and remain in full force and virtue; and the party of the first part, his agents, attorneys, executors, administrators, and assigns, may, at any time after such default, and either before or after the determination of the foregoing lease, enter into any place where the said goods and chattels may be located, and seize the same, and sell and dispose of them, or any of them at public vendue, giving six days previous notice of such sale, by written or printed notices posted at three or more public places in the said township, and out of the proceeds pay and retain the charges of such seizure and sale, and all sums of money due and owing by virtue of the said covenants, if so much there shall be, rendering the surplus, if any, to the party of the second part.

In witness whereof the said parties have hereunto set their hands and seals, the day and year first above written.

	-----,	{ L. S. }
	-----,	{ L. S. }
In presence of	-----,	{ L. S. }
-----,	-----,	{ L. S. }
-----,		

LEASE—SHORT.

IT IS HEREBY AGREED, between, party of the first part, and, party of the second part, as follows: The said party of the first part, in consideration of the rents and covenants herein specified, does hereby let or lease to the said party of the second part, the following described premises (describe them), for the term of, from and after the day of, 18 , on the terms and conditions hereinafter mentioned, to be occupied for (state purpose), and in no case to be used for any business deemed extra hazardous on account of fire.

Provided, That in case any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first party, his certain attorney, heirs, representatives, and assigns, to re-enter into,

repossess the said premises, and the said party of the second part, and each and every other occupant to remove and put out.

And the said party of the second part does hereby hire the said premises for the term of as above mentioned, and does covenant and promise to pay to the said party of the first part, his representatives and assigns, the annual rent of dollars, in installments, to wit: (state times of payment), and that he will not assign nor transfer this lease, or sub-let said premises, or any part thereof, without the written assent of said party of the first part.

And also, that he will at his own expense, during the continuance of this lease, keep the said premises and every part thereof in as good repair, and at the expiration of the term, yield and deliver up the same in like condition as when taken, reasonable use and wear thereof and damage by the elements excepted.

And the said party of the first part does covenant that the said party of the second part, on paying the aforesaid installments and performing all the covenants aforesaid, shall and may peacefully and quietly have, hold, and enjoy the said demised premises for the term aforesaid.

Witness our hands and seals this day of, 18...

....., [SEAL.]
..... [SEAL.]

AGREEMENT OF SURETY FOR RENT.

In consideration of the letting of the premises in the foregoing instrument described, and for the sum of one dollar, to me paid, I do hereby become surety for the punctual payment of the rent and performance of the covenants in said instrument mentioned, to be paid and performed by the second parties therein named; and if any default shall at any time be made therein I do hereby promise and agree to pay unto the party of the first part named in said instrument, the said rent and arrears thereof that may be due, and fully satisfy the condition of said instrument, and pay all damages that may occur by reason of the non-fulfillment thereof, without requiring notice or proof of the demand being made.

Witness ... hand ... and seal ... this ... day of, 18...
[Signature of surety and seal.]

Letter of Credit. A letter of credit is a letter (usually unsealed) from a person, generally a banker, addressed to his correspondent in another country, requesting him to extend to the bearer credit for a certain sum of money, as the following form will illustrate:

DETROIT, Mich., Sept. 25, 1885.

Messrs. Morton, Rose & Co., London:

GENTLEMEN—We take pleasure in introducing to you Mr. Israel T. Cowles, who purposes visiting England and France, and desires us to open a credit with you for him for one thousand pounds sterling. You will please honor his drafts to an amount not exceeding in the aggregate the above named sum, and charge the same to us, with advice.

The signature of Mr. Cowles accompanies this.

Very respectfully your obedient servants,

Signature of

CASE & CARPENTER.

ISRAEL T. COWLES.

Marriage. Marriage in the United States is a civil contract, which may be entered into by a simple declaration of the contracting parties, made in the presence of one or more witnesses, that they, the said parties, do respectfully contract to be man and wife.

No particular form of ceremony is requisite, nor is it imperative that it should be performed by a particular person; yet, from long usage, and from a consciousness of the vast importance of the contract to the parties thereto, the ceremony is, almost universally, performed by, or in the presence of, a clergyman or magistrate.

As to the proper parties to enter into this contract, it is requisite: 1st, that they be willing to contract; 2d, that they be of sound mind, and have arrived at the age which the law considers as entitling them to join in such contract; 3d, that neither of the parties is married already to another, who is living, and from whom such party has not obtained a divorce from the bonds of matrimony; and 4th, that the parties are not related by consanguinity or affinity within the degrees prohibited by the laws of the State in which the marriage is consummated.

CERTIFICATE OF MARRIAGE BY A MAGISTRATE.

This is to certify that on the day of, in the year of our Lord one thousand eight hundred and, before me, the subscriber, one of the Justices of the Peace within and for the county of,, of the town of, in said county, merchant, and, of the same place, were joined in marriage; each taking the other for husband and wife, according to law.

In witness whereof, I have hereunto set my hand and seal, at . . .foresaid, the day and year above written.

....., [SEAL.]
Justice of the Peace.

BY A CLERGYMAN.

This is to certify, that on the day of, in the year of our Lord one thousand eight hundred and, of, County of, and State of, and, of the same place, were by me united in the bonds of marriage, at aforesaid, according to the ordinance of God and the laws of the State of

Given at aforesaid, the day of, A. D. 18...

.....,
Minister of the Gospel.

Mortgages. See chapter on mortgages, pages 54-66.

SHORT FORM OF MORTGAGE.

THIS INDENTURE, made the day of in the year one thousand eight hundred and, between A. B., of, in the County of and State of, of the first part, and C. D., of, in said County, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of dollars, grants, bargains, sells, and confirms unto the said party of the second part, and to his heirs and assigns, all (here insert description), together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining. This conveyance is intended as a mortgage, to secure the payment of the sum of dollars, in (here state terms of payment), according to the condition of a certain bond, dated this day, and executed by the said party of the first part to the said party of the second part; and these presents shall be void if such payment be made. But in case default shall be made in the payment of the principal or interest, as above provided, then the party of the second part, his executors, administrators, and assigns are hereby empowered to sell the premises above described, with all and every of the appurtenances, or any part thereof, in the manner prescribed by law, and out of the money arising from such sale, to retain the said principal and interest, together with the costs and charges of making such sale; and the overplus, if any there be, shall be paid by the party making such sale, on demand, to the party of the first part, his heirs or assigns.

In witness whereof, the said party (or parties) of the first part has (or have) hereunto set his hand and seal (or their hands and seals), the day and year first above written.

[Signature and seal.]

Signed, sealed, and delivered in the presence of

[Signature of witness.]

LONG FORM OF MORTGAGE.

THIS INDENTURE, made this day of in the year of our Lord one thousand eight hundred and eighty-....., between A. B., of, party of the first part, and C. D., of, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of dollars, to....in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, ha... granted, bargained, sold, remised, released, enfeoffed, and confirmed, and by these presents do grant, bargain, sell, remise, release, enfeoff, and confirm unto the said party of the second part, and to heirs and assigns forever, all certain piece or parcel of land, situate and being in the of, in the county of and State of, known and described as (insert description of premises), together with the hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to hold the above bargained premises unto the said party of the second part, and to his heirs and assigns, to the sole and only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever:

Provided, always, and these presents are upon the express condition, that if the said party of the first shall and do well and truly pay or cause to be paid to the said party of the second part, the sum of (state the amount and times of payment of principal and interest), according to a certain promissory note (or bond) bearing even date herewith, executed by ... to the said party of the second part, as collateral security, then these presents and said note (or bond) shall cease, and shall be null and void. But in case of non-payment of the said sum of, or of the interest thereof, or any part of said principal or interest, at the time, in the manner, and at the place above limited and specified for the payment thereof, then, and in such case, it shall and may be lawful for the said party of the second part, his heirs, executors, administrators, or assigns, and the said party of the first part does hereby empower and authorize the said party of the second part, his heirs, executors, administrators, or assigns, to grant, bargain, sell, release, and convey the said premises, with the appurtenances at public auction or vendue, and on such sale to make and execute to the purchaser or purchasers, his, her, or their heirs and assigns forever, good, ample, and sufficient deed or deeds of conveyance in law, pursuant to the statute in such case made and provided, rendering the surplus moneys (if any there should be), to the said party of the first part, his heirs, executors, or administrators, after deducting the amount then due, the costs and charges of such vendue and sale aforesaid, and also dollars as an attorney fee, should any proceeding be taken to foreclose this indenture by such sale and conveyance.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Sealed and delivered }
in presence of }

.....,
.....

-----, { L. S. }

-----, { L. S. }

----- { L. S. }

ASSIGNMENT OF MORTGAGE.

KNOW ALL MEN BY THESE PRESENTS, That A. B., party of the first part, for and in consideration of the sum of dollars,, lawful money of the United States of America to him in hand paid by C. D., party of the second part, at or before the ensealing or delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred, and set over, and by these presents, does grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, a certain indenture of mortgage, bearing date the day of, one thousand eight hundred and, made by (state who and to whom made), and recorded in the Register's office of the county of, State of, in liber of mortgages, at page, with all and singular the premises therein mentioned and described, together with the note or obligation therein also mentioned, and the moneys now due, and the interest that may hereafter grow due thereon; to have and to hold the same unto the said party of the second part, his heirs and assigns, forever, subject only to the proviso in the said indenture of mortgage mentioned. And I do hereby authorize and appoint the said party of the second part, my true and lawful attorney, irrevocable in my name, or otherwise, but at his proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the sum or sums of money now due and owing, or hereafter to become due and owing, upon the said note and mortgage; and in case of payment to give acquittance or other sufficient discharge, as fully as I might or could do if these presents were not made; and I do hereby for myself, my heirs, executors, and administrators, covenant, promise, and agree, to and with the said party of the second part, that there is now due upon the said note and mortgage the sum of (state what), and that I have good, right, and lawful authority to grant, bargain, and sell the same in the manner aforesaid.

Sealed and delivered, the day of, 188...
In presence of [L. S.]

DISCHARGE OF MORTGAGE.

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of do hereby certify that a certain indenture of mortgage, bearing date the day of, one thousand eight hundred and, made and executed by C. D., party of the first part, to myself, as party of the second part, and recorded in the Register's office for the county of, in liber of mortgages, on page on the day of, one thousand eight hundred and, is fully paid, satisfied, and discharged.

In witness whereof I have hereunto set my hand and seal., the day of, one thousand eight hundred and

Signed, sealed, and delivered } [L. S.]
in presence of } [L. S.]

.....,
.....

CHATTEL MORTGAGE.

KNOW ALL MEN BY THESE PRESENTS, That A. B., of, party of the first part, being justly indebted unto C. D., of, party of the second part, in the sum of dollars, has, for the purpose of securing payment of the said debt and the interest thereof, granted, bargained, and sold, and by these presents does grant, bargain, and sell unto the said party of the second part the following goods and chattels, to wit: (describe them.) To have and to hold the same unto the said party of the second part, his executors, administrators, and assigns forever; which said goods and chattels, at the date hereof, are situate at, and are hereby warranted to be free and clear from all liens, conveyances, incumbrances, and levies. Provided always, and the condition of these presents is such, that if the said party of the first part shall pay or cause to be paid to the said party of the second part the debt aforesaid, with interest, at the time, and in the manner (state method and times of payment of principal and interest), then this instrument shall be void and of no effect, otherwise to be and remain in full force and virtue. And the said party of the first part hereby agrees to pay the same at the time and in the manner aforesaid. And if default be made in such payment, either in whole or in part, the said party of the second part is hereby authorized to take possession of and sell at public auction, after due and legal notice, the goods and chattels hereinbefore mentioned, or so much thereof as may be necessary to satisfy and pay the whole of the said debt, interest, and reasonable expenses, and to retain the same out of the proceeds of such sale; the overplus, or residue, if any, to belong and to be returned to the said party of the first part. And the said party of the second part is hereby authorized at any time when he shall deem himself insecure, to take possession of the said goods

and chattels, and the same retain in some convenient place, at the risk and expense of the said party of the first part, until the said debt is fully paid, or the said goods and chattels are sold at auction in the manner hereinbefore specified.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day of in the year of our Lord one thousand eight hundred and

Signed, sealed, and delivered } [L. S.]
in the presence of } [L. S.]
.....
.....

Partnership.

ARTICLES OF COPARTNERSHIP.

Articles of agreement, made the day of, one thousand eight hundred and, between A. B., of, and C. D., of, witnesseth, as follows:

1. The said parties above named have agreed to become copartners in business, and by these presents do agree to be copartners together under and by the name or firm of B. & D., in the business of (here designate it briefly, but accurately), in the buying and selling all sorts of goods, wares, and merchandise to the said business belonging. The partnership to commence on the day of, and to continue years.
2. To that end and purpose the said A. B. has contributed the sum of dollars in cash, and the said C. D. has contributed the lease of the store in to be occupied by them, and the stock of goods and good will of the business there heretofore carried on by him, which are together estimated and valued by the parties at the like sum of dollars, the capital stock so formed to be used and employed in common between them, for the support and management of the said business, to their mutual benefit and advantage.
3. At all times during the continuance of their copartnership, they and each of them will give their attendance, and do their and each of their best endeavors, and to the utmost of their skill and power exert themselves for their joint interest, profit, benefit, and advantage, and truly employ buy, sell, and merchandise with their joint stock, and the increase thereof, in the business aforesaid. And also, that they shall and will at all times during the said copartnership, bear, pay, and discharge equally between them, all rents and other expenses that may be required for the support and management of the said business; and that all gains, profits, and increase that shall come, grow, or arise from or by means of their said business, shall be divided between them equally; and all losses that shall happen to their said joint business by ill commodities, bad debts, or otherwise shall be borne and paid between them equally.
4. And it is agreed by and between the said parties that there

shall be kept at all times during the continuance of their copartnership, perfect, just, and true books of account, wherein each of the said copartners shall enter and set down, as well all money by them or either of them received, paid, laid out, and expended in and about the said business, as also all goods, wares, commodities, and merchandise by them or either of them bought or sold, by reason or on account of the said business, and all other matters and things whatsoever, to the said business and the management thereof in anywise belonging; which said books shall be used in common between the said copartners, so that either of them may have access thereto, without any interruption or hindrance of the other. And also, the said copartners, once in (designating the times), or oftener, if necessary, shall make, yield, and render, each to the other, a true, just, and perfect account of all profits and increase by them or either of them made, and of all losses by them or either of them sustained; and also all payments, receipts, disbursements, and all other things by them made, received, disbursed, acted, done, or suffered in this said copartnership and business; and when the account is so made shall clear, adjust, pay, and deliver, each to the other, at the time, their just share of the profits, and pay and bear their just share of the expenses and losses so made as aforesaid.

5. And the said parties hereby mutually covenant and agree, to and with each other, that during the continuance of the said copartnership neither of them shall indorse any note, or otherwise become surety for any person or persons whomsoever, without the consent of the other of the said copartners. And at the end or other sooner determination of their copartnership, the said copartners, each to the other, shall make a true, just, and final account of all things relating to their said business, and in all things truly adjust the same; and all and every the stock and stocks, as well as the gains and increase thereof, which shall appear to be remaining, either in money, goods, wares, fixtures, debts, or otherwise, shall be divided between them.

In witness whereof, the parties thereto have hereunto interchangeably set their hands and seals the day and year first above written.

A. B. [SEAL.]
C. D. [SEAL.]

Signed, sealed and delivered in presence of
[Signature of witness.]

ADVERTISEMENT OF DISSOLUTION.

Notice is hereby given, that the partnership lately subsisting between A. B. and C. D. of under the firm of B. and D., expired on the day of, (or, was dissolved on the day of by mutual consent, or, pursuant to the terms of the

articles.) All debts owing to the said partnership are to be received by said A. B., and all demands on the said partnership are to be presented to him for payment (or, A. B. is authorized to settle all debts due to and by the firm).

[Date.]

[Signatures of partners.]

ADVERTISEMENT OF A PARTNER'S RETIRING.

Notice is hereby given, that the partnership between A. B., C. D., and E. F., was dissolved on the day of so far as relates to the said E. F. All debts due to the said partnership, and those due by them, will be settled with and by the remaining partners (who will continue the business under the firm of B. & D).

[Date.]

[Signatures of the partners.]

Petitions.

PETITION TO THE CONGRESS OF THE UNITED STATES.

To the Honorable the Senate and House of Representatives of the United States in Congress assembled.

The petition of the subscribers, citizens of, in the State of, respectfully sheweth: (stating the subject of the petition). And your petitioners will ever pray, etc.

TO THE LEGISLATURE OF A STATE.

To the Honorable the Senate and House of Representatives of the Commonwealth of (or, State of), in General Assembly met (or in General Court assembled; or, in Legislature convened).

The petition of the subscribers, citizens of, in the County of, respectfully sheweth: (stating the subject of the petition). And your petitioners will ever pray, etc.

TO THE EXECUTIVE OF A STATE.

To his Excellency,, Governor of the State of (or Commonwealth of)

The petition of, etc., (as in foregoing).

Power of Attorney. A power of attorney is a written instru-

ment by which one person is empowered to act for another. A person acting under a power of attorney is called an attorney in fact. The power of attorney to authorize a person to execute a sealed instrument for his principal, should be under seal, executed, attested, and acknowledged the same as a deed. These powers are general and special, and empower the holders thereof to act the same as general or special agents, and are subject to the same laws of revocation as are the powers of agents.

A SHORT FORM OF POWER OF ATTORNEY.

Know all men that I, John Smith, of the town of, in the County of, State of, do hereby make, constitute, and appoint James Brown, of the town of, county of, State of, my true and lawful attorney for me and in my name to † [here insert what the attorney is authorized to do] and to do and perform all acts or things in the execution of the aforesaid business, as fully and completely as I might do were I present.

In witness whereof, I have hereunto set my hand and seal this day of , 18...

[Signed by person granting the power.]

Signed, sealed, and delivered in the presence of

[Signatures of witnesses.]

POWER TO COLLECT RENTS.

(Use preceding form, and place the following after †) to ask, demand, distraint for, collect, and receive all such rents and arrears of rent as are now due, or may fall due, or owing to me at any time hereafter, from , of , or such tenants or persons as may be occupying any lands, tenements, or hereditaments as may belong to or be claimed by me, lying in the town of , County of , State of , or which may be due from, or payable by, any person or persons as tenements, occupiers, lessees, or assignees of any term or terms of such lands, or any part of such lands, tenements, or hereditaments, and upon such payment to give a proper receipt and discharge thereof (then continue with what follows the bracket in first form).

POWER TO COLLECT DEBTS.

(Use first form, inserting the following at †) to ask, demand, sue for, collect, receive, and give receipts for all moneys, debts, and demands of any kind which now are due, or shall become due, owing and belonging to, or kept from me by (names of persons from whom the debt is due) or any person or persons residing (continue with what follows the bracket in first form).

POWER TO SELL AND CONVEY LANDS.

(Use first form, and insert the following at †) to grant, bargain, and sell all or any such part of it, for such sum or price, and on whatever terms that shall seem to him just and proper, and for me and in my name to make, execute, and acknowledge and deliver good and sufficient deeds for the same, either with or without covenants and warranty (continue as in first form after the bracket).

POWER TO MORTGAGE LAND.

(Use first form, and insert after † the following) to borrow money upon the security of my land in to an amount not greater than, and to sign, seal, and deliver a bond or bonds for the payment of such sums (insert the terms upon which the payment is to be made, if there is to be a limitation), and to sign, seal, and deliver as security a mortgage or mortgages upon my said real estate, with the usual power of sale, and insurance and interest clauses, and such other covenants and provisions as are customary (continue as in first form after the bracket).

REVOCATION OF POWER OF ATTORNEY.

Know all men that whereas, I, John Smith, in and by my letter of attorney made the ... day of, 18..., did make, constitute, and appoint James Brown, to be my true and lawful attorney for me and in my name, to (copy the letter of attorney) as by said letter may more fully appear.

Know all that I, the said John Smith, have revoked, recalled, annulled, and made void, and do revoke, recall, annul, and make void the said letter of attorney mentioned above, and all powers or authorities therein granted, or intended to be granted, to the said James Brown.

In witness whereof, etc. (as in first form).

Receipts.

RECEIPT FOR MONEY.

Received from A. B. the sum of dollars.
[Date.]

C. D.

RECEIPT FOR CHATTELS.

Received from Y. Z. one cart, one wagon, one plow, one harrow, one black horse five years old, known as Jack, and a yoke of oxen, heretofore kept by said Y. Z. on his farm in

[Date.]

A. B.

RECEIPT FOR PAPERS.

I hereby acknowledge that I have received from Y. Z. the several notes (or deeds, or contracts), and other papers, which are enumerated and described in the schedule annexed.

[Date.] A. B.
 (Annex list, identifying papers by dates, parties' names, etc).

RECEIPT FOR CASH PAYMENT, IN FULL OF ALL DEMANDS.

Received from A. B. the sum of dollars, in full of all demands against him. C. D.

[Date.]

RECEIPT FOR MONEY PAID BY A THIRD PERSON.

\$..... Received from A. B., by the hand of E. F., the sum of dollars. C. D.

[Date.]

RECEIPT FOR MONEY ON BEHALF OF A THIRD PERSON.

\$.... Received from A. B. the sum of dollars. C. D.
per E. F.

A RECEIPT TO BE ENDORSED ON A WRITTEN INSTRUMENT.

\$..... Received from A. B. the sum of dollars, being (a part of) the amount due upon the written bond (or contract, or policy of insurance, etc.). C. D.

RECEIPT ON ACCOUNT GENERALLY.

\$..... Received from A. B. the sum of dollars, on account. C. D.

[Date.]

RECEIPT FOR A QUARTER'S RENT.

\$..... Received of A. B. the sum of dollars, being one quarter's rent, due this day, for my dwelling-house and estate, No. street, now occupied by said A. B. C. D.

[Date.]

RECEIPT FOR PAYMENT FOR PROFESSIONAL SERVICES.

\$..... Received from A. B. the sum of dollars, for professional services rendered by me in (state the nature of the services).

[Date.]

C. D.

RECEIPT FOR MONEY TO BE PAID OVER.

\$..... Received from A. B. the sum of ... dollars, to be paid to the bank of on their surrendering a note which they hold, made by said A. B., dated the day of, 18.., for dollars payable days after date.

C. D.

RECEIPT FOR MONEY TO BE DISBURSED.

\$..... Received from A. B. the sum of dollars, to be expended in necessary traveling expenses and disbursements in going to for him to obtain letters patent (or otherwise state the nature of the disbursements intended).

C. D.

[Date.]

RECEIPT FOR MONEY TO BE REPAID.

\$..... Received from A. B., of, the sum of dollars, which I promise to repay to him on demand (or, in days, or, months; or, on the day of, 18..).

C. D.

[Date.]

RECEIPT IN FULL OF A PARTICULAR DEMAND.

\$..... Received from A. B. the sum of dollars, in full of all demands for (state nature of claim) up to date (or, to the day of, 18..).

C. D.

[Date.]

RECEIPT FOR STOCK PUT OUT TO WINTER.

Received from A. B. head of horned cattle, viz.: ... cows and young oxen, together with horses and swine, which I promise to keep through the winter and feed with good hay, etc., and return in good condition on the first day of next, casualties excepted, he paying me dollars each, for the cattle and horses, and dollars each for the swine.

C. D.

Witness my hand.

Releases.**GENERAL RELEASE OF ALL DEMANDS.**

Know all men by these presents, that I, A. B., of the city of, for and in consideration of the sum of one dollar to me in hand paid by C. D., of, do hereby release and forever discharge the said C. D., his heirs, executors, and administrators, of and from all actions, causes of action, suits, controversies, claims, and demands whatsoever, for or by reason of any matter, cause, or thing, from the beginning of the world down to the day of, 18...

In witness whereof, I have hereunto set my hand and seal this day of, one thousand eight hundred and

In presence of
[Witness' signature.]

[Signature and seal.]

MUTUAL GENERAL RELEASE.

This indenture, made this day of, 18..., between A. B., of, of the one part, and C. D., of, of the other part, witnesses, that the said A. B. and C. D. have this day cancelled and delivered up to the other certain covenants, bonds, notes, and written contracts, upon which he claimed to have demands on the other; the said claims and instruments so cancelled and delivered up being supposed and intended to be all the claims and evidence of claims by either of the parties hereto on the other. And in consideration thereof, each of them, the said A. B. and C. D., does hereby, for himself and his legal representatives, release, and absolutely and forever discharge the other of and from all claims and demands, actions, causes of action, of every name and nature, so that neither of them shall have any claim on the other, directly or indirectly, on any contract, or supposed liability, or thing undertaken, done, or omitted to be done, from the beginning of the world to this day.

In testimony whereof, the said parties have hereto interchangeably set their hands and seals the day and year first above written.

In presence of
[Signature of witness.]

[Signatures and seals.]

SPECIAL RELEASE.

Know all men by these presents, that I, A. B., of the, city of, for and in consideration of the sum of one dollar to me in hand paid by C. D., of, do hereby release and forever discharge the said C. D., his heirs, executors, and administrators, of and from all actions, causes of action, suits, controversies, claims, and all demands whatsoever by reason (here state the nature of the matter released).

Witness my hand.

A. B.

Societies, etc. The following forms may be of service in the organization of various kinds of associations, as agricultural societies, debating societies, etc.

CONSTITUTION FOR A STATE AGRICULTURAL SOCIETY.

ARTICLE 1. The name of this association shall be "The Michigan State Agricultural Society," and its object shall be to promote the improvement of agriculture and its kindred arts, throughout the State of Michigan.

ART. 2. The officers of this society shall be a President, one Vice President in each organized county in the State, a Recording Secretary and a Treasurer, and the Corresponding Secretary of each organized County Agricultural Society shall be the Corresponding Secretary of this Society for their county; and any county not having an organized County Agricultural Society shall not be entitled to a Corresponding Secretary of the State Society; and an Executive Committee, consisting of the President, Treasurer, and Recording Secretary, and twenty other members to be chosen for that purpose, and also the ex-Presidents of the society. These officers shall be elected by a majority of the votes at the annual meeting of the society, and shall, except the twenty members of the Executive Committee, hold their office for one year, and until the annual meeting of the Executive Committee. There shall be thirteen members of the Executive Committee elected at the meeting of the society in 1871, ten of which members shall be chosen to serve two years from January, 1872, and three members for one year from the same date; and at the next annual meeting of the society, and annually thereafter, ten members of the Executive Committee shall be elected to hold for two years, and until the annual meeting of the Executive Committee: *Provided*, That the officers named upon the organization of the society shall be deemed members, and shall remain officers only until others shall be duly elected at the first annual meeting; and if a vacancy happen, it may be filled by appointment of the Executive Committee.

ART. 3. The duties of the President, Vice President, Recording and Corresponding Secretaries shall be such as usually pertain to their respective offices, and such also as may be prescribed by the order of the Executive Committee, as hereafter provided.

ART. 4. The Treasurer shall receive and keep an accurate account of all moneys belonging to the society; he shall pay out its money only on the order of the Executive Committee, and at each annual meeting of the society he shall make a full report of its financial transactions and conditions.

ART. 5. The Executive Committee shall determine the place for holding each annual meeting and fair of the society, and it shall call that meeting and fair at such times as it shall judge best,

between the first Monday in September and the third Monday in October, giving at least sixty days' public notice thereof.

ART. 6. The Executive Committee shall direct the money appropriations of the society, and have the control of its property; it shall make the necessary preparations for the annual fair, and issue all proper public notices and circulars in relation thereto, or to the general object of the society; it shall prepare the necessary by-laws of the society, and may prescribe such duties to the other officers of the society as are not inconsistent with the usual business of their respective offices. It shall itself obey the instructions which may be given to it at the annual meeting of the society, and at the expiration of its term of service shall make a full report of its proceedings. It shall be competent for the Executive Committee, or a majority of them, to appoint a Chairman and Secretary, who may transact such business as they may be authorized to do by said committee; and said Secretary shall sign, and said Chairman shall countersign, all orders on the Treasurer for the payment of any money directed by said committee to be paid for any purpose, and said Secretary shall keep an accurate account of all orders so drawn.

ART. 7. It shall be the duty of the Executive Committee annually to regulate and award premiums on such articles, productions, and improvements as they may deem best calculated to promote the agricultural and household manufacturing interests of the State, having special reference to the most economical or profitable mode of competition in raising the crops or stock, or in the fabrication of the articles offered: *Provided, always,* That before any premium shall be delivered, the person claiming the same, or to whom the same shall be awarded, shall deliver to the Recording Secretary of the society, in writing, an accurate statement and description, verified in such manner as the Executive Committee may direct, of the character of the soil, and the process in preparing it, including the quantity and quality of the manure applied in raising the crop, or the kind and quality of food in feeding the animal, as the case may be; also the kind and cost of labor employed, and the total expenses and total productions of the crop, or the increase of value of the animal, with a view of showing accurately the exact resulting profit.

ART. 8. The Executive Committee shall meet annually, at such place as it may itself choose, on or before the second Monday in January, and shall then immediately prepare a report and abstract of the transactions of the society during the preceding year, embracing such valuable reports from committees, statements of experiments, cultivation and improvement, proceedings of county societies, correspondence, statistics, and other matters, the publication of which will exhibit the condition of the agricultural interests of Michigan, and a diffused knowledge of which will, in the judgment of the committee, add to the productiveness of agricultural and household labor, and therefore promote the general pros-

perity of the State; and, as soon as practicable, the committee shall transmit such report and abstract to the President of the Senate for the use of the Legislature.

ART. 9. No officer of this society, except the Recording Secretary, shall receive any compensation for his services. The Executive Committee shall allow said secretary such sum for past and future services as they may deem advisable.

ART. 10. Any person may become a member of the Michigan State Agricultural Society, for one year, by paying one dollar into its treasury. Any officer of the society may receive and forward to the treasurer the fee requisite to a membership. By paying ten dollars into the treasury of the society, any person may become a life member, and shall be entitled to a certificate of such membership, signed by the president and recording secretary.

ART. 11. The several County Agricultural Societies that now exist, or may hereafter exist in this State, shall be deemed auxiliaries of the State Society, and it shall be the duty of the Executive Committee to invite and receive reports and abstracts of the County Societies, to be used in preparing the annual report to the Legislature, which is provided for by article eight of this constitution.

ART. 12. The president and recording secretary of each County Agricultural Society, and all life members of this society, may attend the annual meeting of the Executive Committee, and freely participate in all discussions which shall occur at said meeting.

ART. 13. This constitution shall be altered only by a vote of two-thirds of the members present at an annual meeting of the society.

ARTICLES OF ASSOCIATION FOR A COUNTY AGRICULTURAL SOCIETY.

1. This society shall be called the County Agricultural Society.

2. The particular business and object of the society shall be the encouragement and advancement of agriculture, manufactures, and the mechanic arts in County.

3. Any person, a resident of County, may become a member by paying to the Treasurer one dollar, and subscribing to the articles of the association. And he shall annually thereafter, on or before the first day of the annual fair, pay one dollar into the treasury so long as he shall continue a member.

4. The officers shall consist of a President, Secretary, Treasurer, and nine Directors, who shall be elected by ballot at the annual meeting, to be held on the third day of each annual fair. Their term of office shall commence on the first day of January then next ensuing, and they shall hold the same for one year thereafter, and until their successors are elected and accepted.

5. The said President, Secretary, Treasurer, and Directors, a majority of whom shall constitute a quorum, shall constitute a board for the management of the concerns of the society, as provided by law.

6. The President, or in his absence such one of the Directors as the members present may select, shall preside at all meetings.

7. The Secretary shall keep a record of the members of the society and of its proceedings, and shall perform the duties usually pertaining to such office, and such duties as the board may from time to time prescribe.

8. The Treasurer shall receive and take charge of all moneys of the society, and shall pay out the same only by direction of the board, or the order of the President, countersigned by the Secretary. He shall keep a correct account of the receipts and expenditures and render an account thereof to the board when requested. And he shall give a bond with sureties in such sum as the board may require, conditioned for the faithful performance of his duties.

9. It shall be the duty of the board to adopt and publish such rules, regulations, and by-laws as may be considered necessary to regulate and carry out the object and business for which the society was formed.

10. These articles of association may be amended at any annual meeting by a two-thirds vote of the members present and voting thereon.

CONSTITUTION FOR A DEBATING SOCIETY.

ARTICLE I.

NAME AND OBJECT.

SEC. 1. The name of this society shall be the "Rouge Glen Literary Society."

SEC. 2. The object of this society shall be the study of literature, composition, and criticism, and practice in the art of debate.

ARTICLE II.

MEMBERSHIP.

SEC. 1. Any citizen of Rouge Glen may become a member of this society by paying to the treasurer an initiation fee of fifty cents and signing his name to the roll of members.

ARTICLE III.

OFFICERS.

SEC. 1. The officers of this society shall be a President, Vice President, Secretary, and Treasurer. They shall be elected by vote of the members, and shall hold office for one year, or until their successors are duly elected.

SEC. 2. It shall be the duty of the President to preside at all meetings, maintain order, decide tie votes, and have general care and supervision over the interests and affairs of the society.

SEC. 3. It shall be the duty of the Vice President to assume and perform the duties of the President in the absence of that officer.

SEC. 4. It shall be the duty of the Secretary to make and keep careful minutes of all meetings, to have the care and custody of the property of the society, to keep true accounts of all business transactions of the club, and to attend to all correspondence.

SEC. 5. It shall be the duty of the Treasurer to collect and take care of all moneys of the society or due the society, and pay the same out on the order of the Secretary endorsed by the President.

ARTICLE IV.

SEC. 1. The meetings of this society shall occur once in two weeks, at such place and time as may be decided upon by the members.

ARTICLE V.

The members of this society shall have power to adopt such by-laws for the regulation of their affairs as they deem expedient.

ARTICLE VI.

This constitution may be amended by a two-thirds vote of all the members. Notice of proposed amendments shall be given in writing to the Secretary, and read by him to the members at the meeting next preceding the one at which the vote on such amendments is taken.

SET OF BY-LAWS FOR A DEBATING SOCIETY.

1. The meetings of this society shall be held in the school house once in two weeks on each alternate Tuesday evening at 8 o'clock P. M.

2. The following shall be the order of exercises observed at the meetings, unless otherwise ordered by the society:

1. Call to order by the President.
2. Reading of minutes of previous meeting by the Secretary.
3. Communications from the President.
4. Reports of Committees.
5. Debate upon the question of the evening.
6. Statement of the question for next discussion.
7. Adjournment.

3. There shall be a standing committee of three members appointed by the President, whose duty it shall be to select questions for discussion, and to name the chief disputant upon each side of the question.

4. After the question for discussion has been stated, and the names of the chief disputants have been announced, the chief disputants shall each select in turn six assistants from among the members.

5. Debate shall be limited to five minutes speeches, excepting those of the chief disputants, who may have ten minutes for their opening speeches.

6. All of the members present at any meeting, who are not selected as debaters, shall act as judges of the debate, and shall decide the question by a majority vote.

7. Cushing's Manual of Parliamentary Procedure shall be the standard of authority upon all questions of procedure.

NOTE.—By-laws, such as the foregoing, may be continued to any extent deemed necessary. The above will sufficiently illustrate their general form.

Wills. See Chapter on Wills, pages 264-271.

WILL OF BOTH REAL AND PERSONAL ESTATE.

I, A. B., of, in the County of and State of, being of sound and disposing mind and memory, do make, publish, and declare this to be my last will and testament, hereby revoking all former wills by me at any time heretofore made.

My will is, that all my just debts and funeral expenses shall, by my executors hereinafter named, be paid out of my estate, as soon after my decease as shall by them be found convenient.

I give, devise, and bequeath to my beloved wife, C. B., all my household furniture, my horses and carriages and the harness; and also dollars in money, to be paid to her by my executors, hereinafter named, within months after my decease; to have and to hold the same to her and her executors, administrators, and assigns forever. I also give to her the use and income of my dwelling house, land, and its appurtenances, situated in afore-said (describing the same), and my land situated in (describing the same), to have and to hold the same to her for and during the term of her natural life.

I give and bequeath to my honored mother, E. B., dollars in money, to be paid to her by my executors hereinafter appointed, within months after my decease; to be for the sole use of herself, her executors, administrators, and assigns.

I give and bequeath to my daughter, L. B., my shares of the stock of the Bank, in , County of and State of, which are of the par value of dollars; to have and to hold the same, together with all the profits and income thereof, to her, the said L. B., her heirs, executors, administrators, and assigns, to her and their use and benefit forever.

I give, devise, and bequeath to my son, H. B., the reversion or remainder of my dwelling or mansion house and its appurtenances, situate in aforesaid (describing it), and all profits, income, and advantage that may result therefrom, from and after the decease of my beloved wife, C. B.; to have and to hold the same to him, the said H. B., his heirs and assigns, from and after the decease of my said wife, to his and their use and behoof forever.

I give, devise, and bequeath to my son, J. B., the reversion or remainder of my land situated in (describing it), and its appurtenances, and all the profits, income, and advantage that may result therefrom, from and after the decease of my beloved wife, C. B., to have and to hold the same to the said J. B., his heirs and assigns, from and after the decease of my said wife, to his and their use and behoof forever.

All the rest and residue of my estate, real, personal, and mixed, of which I shall die seized and possessed, or to which I shall be entitled at my decease, I give, devise, and bequeath, to be equally divided between and among my said sons, H. B. and J. B.

And, lastly, I do nominate and appoint my said sons, H. B. and J. B., to be the executors of this my last will and testament.

In witness whereof, I, the said A. B., have to this, my last will and testament, consisting of sheets of paper, subscribed my name and affixed my seal this day of, in the year of our Lord one thousand eight hundred and

Signed, sealed, published, and declared by the said A. B., as and for his last will and testament, in the presence of us, who, at his request and in his presence, and in the presence of each other, have subscribed our names as witnesses thereto.

A. B. [SEAL.]

[Signatures of witnesses.]

....., residing at, in County.
 , residing at, in County.
 , residing at, in County.

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APPENDIX.

UNIVERSITY OF ILLINOIS, CHICAGO

CHAPTER I.

THE GENERAL RIGHTS AND DUTIES OF EMPLOYER AND EMPLOYEE.

- | | |
|------------------------------------------|-------------------------------|
| 1. Importance of the Subject. | 5. Just Cause for Leaving. |
| 2. Relation of Employer and
Employee. | 6. Employer's Duties. |
| 3. Effect of Custom. | 7. Employee's Compensation. |
| 4. Breach of Contract. | 8. Liability for Labor Debts. |

1. Importance of the Subject. The serious difficulties which have arisen in various parts of the country over the adjustment of the mutual rights of labor and capital have made this subject one of great importance. A widespread movement on the part of labor looking toward its complete organization seems to be taking place. In some respects it is a revolution, but proceeding by peaceful means. Its aim is, or should be, to proceed under the law where the law is adequate; and where the law is not adequate, by awakening the agitation necessary to bring about its amendment. How important, therefore, it is to have clear understanding as to the present status of the law, to the end that evasions and transgressions of it may be avoided, and where found insufficient it may, by wise legislation, be so amended that right and harmony may prevail. .

2. Relation of Employer and Employee. The relation existing between one who employs and the one who is employed arises by contract of the parties. There is no way now with us by which one person can become entitled to the services of another except by the free consent of the person performing the service. It follows that the capacity of parties to contract may affect this relation. Contracts of hiring with minors may not always be enforced against them. Upon this point see the

paragraph on the subject in another part of the book. The relation of master and workman is one involving mutual confidence and good faith. The employe agrees to discharge his service to the best of his ability and to protect and advance his employer's interests. The employer agrees likewise to guard the welfare of his employes, and he will be liable to them for failure in this regard. Upon the questions of the liability of the employer to his employes and to others for the acts of his employes, see chapters on these subjects in another part of the book.

3. Effect of Custom. In entering the relation of employer and employe, parties are presumed to contract with reference to the custom in vogue in the particular occupation in that part of the country where the service is to be performed. Contracts of hiring are not often written; they are generally made verbally, and in either case but few words are used. The rest is left to the custom of the trade, and the parties are bound by it. Thus in hiring by the day, if nothing is said as to the number of hours to be worked, the parties are presumed to have contemplated the number of hours customary for a day's work in that locality and trade. If the statute determines this, as it does in some States, that will govern, unless a special agreement is made to the contrary and is permissible—as it is in most cases. If the hiring is by the month, the custom as to hours and work in the way of chores or the like on Sundays and holidays, will govern. But in all cases it is well to have every point covered by a definite agreement.

4. Breach of Contract. If the contract of hiring is for a definite time, as for one month or one year, neither party can terminate it before the time has expired, except for good cause, without becoming liable to the other for the injury resulting. A farm laborer, for instance, cannot hire out for the season and then leave with immunity at harvest time because he can get higher wages elsewhere. If he does so, many decisions hold that he cannot recover anything for the work already done, (19 Mo., 60; 25 Conn., 188), but the better doctrine seems to be that he can recover what is due him over and above the damage done his employer by leaving before his time is out. So if an employer turns his employe away without just cause, he will be liable for an amount sufficient to indemnify the employe for loss

of wages during the time spent in getting new employment and for loss of excess of wages contracted for above those obtained at the new employment.

5. Just Cause for Leaving. It is difficult to state with accuracy what will in all cases justify the employe in leaving before his time is out. In general if the employer requires the employe to perform immoral or illegal service, or if he fails to pay him according to contract, or to furnish him proper food or other necessities when such are included as compensation, or if he willfully misuses or maltreats him, the employe may leave and may recover the amount due him and damages.

If the employe is guilty of immoral conduct, willful disobedience, habitual neglect of duty, or does not possess the skill common among workmen of his class, the employer may discharge him.

6. Employer's Duties. It is the employer's duty to use diligence and care in the selection of skillful, competent and trusty employes. He must then furnish them with safe and suitable means for performing the service contracted for.

Having done this he will not be liable to any one of them who is injured through the carelessness of another if both are engaged in the same service. (42 Me., 269). Nor will he be liable for injuries which result from conditions incident and unavoidable in the employment contracted for. Risks necessarily incident to the employment are assumed by the employe when he enters the service. But upon these points see the chapter on the "Liability of the Employer," in another part of this book.

The employer will be responsible to third parties for all acts of his employes performed in the scope of the employment, and also contracts made by them within the scope of their authority will be binding upon the employer.

7. Employe's Compensation. One of the first duties of the employer is to pay his workmen for their work. The payment of labor debts is more carefully provided for by the law than that of any other class. They are usually exempt from garnishment, when due to householders, up to \$25, as is explained in the chapter on that subject. They may most always be secured by liens upon real or personal property, as is set forth in the chapter on liens; and they take priority over other debts in very many cases. For example, the voluntary assignment and

bankruptcy laws of the several States usually provide that labor debts shall be paid in full whether anything remains for other creditors or not.

A judgment when obtained upon a labor debt cannot usually be stayed for ninety days as in other cases, but execution will issue thereon at once if it is not paid. Such is the law of Michigan. (Howell's Statutes, § 7091 a.). In some States no property is exempt from execution, when the execution is issued on a judgment obtained for a labor debt, except such as the State Constitution positively requires. In Michigan a female plaintiff in a suit for a labor debt is allowed to recover an attorney's fee of five dollars in Justice Court in addition to other costs. (Howell's Statutes, § 7091).

8. Liability for Labor Debts. The liability for labor debts is more extended than that for other claims. In the case of limited partnerships, for instance, a special partner may put in a certain amount of capital into a partnership and by complying with certain provisions have his general liability limited to that amount. But it will be found on examining the statutes providing for these limited partnerships, that the limitation does not extend to labor debts. Such debts may usually be collected from any partner, whether special or general. So likewise in the case of corporations, the individual members or stockholders are not personally liable. Their stock may be sequestered and sold if necessary, in certain cases, but individually they are not generally responsible for the debts of the company. Labor debts, however, against corporations will be found to be placed on a better footing and may be collected from any stockholder, if the corporation has become insolvent. Such is the law of most if not all the States; even in the case of railroad, mining and manufacturing corporations, where the owner of a single share of stock may become responsible for labor debts aggregating many thousands of dollars.

Mechanics liens cannot attach to public buildings of any kind; but most States have provisions for securing payment of wages earned on public buildings. In Michigan, the contractor and sub-contractors are required to give a bond for the payment of all labor debts or debts for materials furnished in the construction of public buildings. (Howell's Statutes, § 8411 a.)

CHAPTER II.

LIENS FOR THE PROTECTION OF MECHANICS, LABORERS AND OTHERS.

- | | |
|--------------------------|----------------------------|
| 1. Use of Liens. | 9. The Michigan Statute. |
| 2. What is a Lien. | 10. Notice to be Given. |
| 3. Common Law Liens. | 11. Priority of Liens. |
| 4. Statutory Liens. | 12. Enforcement of Liens. |
| 5. Mechanics' Liens. | 13. Other Statutory Liens. |
| 6. Requisites of a Lien. | 14. General Principles. |
| 7. Equitable Liens. | 15. A Precaution. |
| 8. How to Secure a Lien. | |

1. Use of Liens. It has sometimes happened that unscrupulous contractors and others have secured the valuable services of workmen in the erection of buildings or other structures, and having received their pay for the same have made off leaving the workmen without pay for their work. For the sake of preventing such kinds of injustice, and of making persons who furnish labor and materials secure in their compensation, the law gives them in certain cases a claim on the product of their labor, and when that product is a structure of any kind, upon the land on which it is erected also. It is important that workmen should know how to take advantage of this wise and just provision.

2. What is a Lien? A lien is a claim which one person has upon the property of another as a security for some debt. The security given by a lien is very much the same as that afforded by a mortgage. Liens are of two kinds, common law and statutory liens.

3. Common Law Liens. At common law a lien consists in the mere right to retain in one's possession the property of another until the debt is paid. It may be the right to keep any property of the debtor on account of a general balance due; but in most cases the lien attaches only to the particular piece of property upon which labor or money has been expended. For

example, whenever a workman or mechanic takes into his own possession a piece of property, like a wagon or watch, etc., to do some work upon it, he is entitled to keep it until he is paid for his work. (14 Pick., 332; 7 Barb., 113). This is particularly the case with mechanics, tradesmen and others who are obliged by law to receive the property of others and be at some trouble or expense concerning it. As for instance, carriers, persons who have repair shops of any kind, etc., and who are required to serve the public generally, are entitled to a lien upon the particular property concerning which the service was rendered.

Thus: An express company can keep a package of goods until the express charges are paid. A tailor may keep a suit of clothes made from of his customer's cloth until the making is paid for.

In all of these cases the lien is lost as soon as the possession of the goods is voluntarily given up.

4. Statutory Liens. It will be seen that the common law liens do not give protection to the great majority of workmen and mechanics, because most of them are employed upon or about property which remains in the owner's possession. Persons employed in the erection of buildings of all kinds, have no protection of this sort at common law. The legislatures of the several States have therefore endeavored to supply the deficiency by enacting laws which give protection to contractors, laborers, and in many cases to persons furnishing material, by giving them a lien upon the result of their efforts.

5. Mechanics' Liens. The most important of these statutory liens is that given to mechanics, laborers and material men for work or material used upon the buildings or other structures which their labor and materials have brought into existence.

Each State has its own laws upon this subject, all of which have the same object, but are not identical in their provisions. To secure the advantage afforded by these statutes it is usually necessary for the mechanic or laborer to give the owner some previous notice. Having done this he secures a claim not unlike a mortgage upon the structure which is being erected, and also upon the land under it. Such a lien when secured, attaches to the buildings and to their appurtenances, as for instance, the outhouses and other buildings necessary to the enjoyment of the premises.

Where a wing is being built on to a structure already built, the lien will attach to the main building, and the whole structure will stand as security. A material man cannot secure such a lien until the material he has furnished actually goes into the building.

One who furnishes lumber, for instance, must wait until it is attached to the building before he can claim a lien.

A building erected for any unlawful purpose cannot be made subject to the lien, if the contractor or laborer or other person seeking the lien, had knowledge of that fact. No lien can attach to any government building.

6. Requisites of a Lien. In order to secure a common law lien, the property upon which it is claimed must have passed lawfully into the hands of the person claiming the lien. No lien exists if the possession was acquired by wrong or misrepresentation, or by act of the owner's agent, unless fully authorized. Lawful possession being the necessary element of all common law liens, it follows that if the creditor once parts with that possession, the lien is gone. (11 Cushing, 231). Of course, by agreement the property can be returned to its owner and the lien extended, though not so as to affect third persons. (36 Wend., 467).

7. Equitable Liens. These are such as exist in equity and of which the courts of chancery alone take notice. They are for the most part too complicated for treatment in this work.

The most common liens of this character are those for purchase money. For instance, if a man sells land, he has an equitable lien upon it for the unpaid purchase price. So where the purchase money has been deposited in the hands of a third person to cover incumbrances or the like, the seller will have a lien upon it.

8. How to Secure a Lien. It follows from what has been stated that Common Law liens are secured by the mere possession of the property upon which they exist. The benefits of the statutory liens can only be secured by carefully complying with whatever conditions the statute prescribes. The mechanic or workman or the person furnishing materials must carefully examine the provisions of the statute in force in his particular State, and see to it that he complies with them in every particular.

As these statutes are not identical in the several States, it is impossible to lay down with accuracy any set of rules to be followed which will be safe to depend upon generally.

It will only be possible to throw out such hints as will enable the reader to secure the protection afforded by his local statute. The statutes of the different States can usually be found in the offices of all Justices of the Peace, township officers and the clerks of the various courts, and provision is usually made whereby any citizen may have the privilege of examining them in those places. The reader therefore, if he does not possess a copy of his State statutes, should either examine them in one of the places above indicated, or should consult his attorney.

For the sake of showing, in a general way, the operation of these statute liens, the Michigan statute will be examined and the method to be followed under it indicated.

9. **The Michigan Statute.** In Michigan the statute provides (see Laws Mich. 85, pg. 293), that every person who shall in pursuance of a contract between himself as contractor and the owner, part owner, lessee, or person having other interest in real estate, build, alter, improve, repair, or furnish labor or materials for so doing, any building, wharf, machinery, or other structure, and every person who shall as sub-contractor, laborer or material man, perform labor or furnish materials to the original contractor for so doing, shall have a lien therefor upon the structure being erected or repaired, and also upon the interest of the owner, part owner, or otherwise, in the land under such structure;—not exceeding one quarter section of land in the country, or one city or village lot if the land lies within the limits of any incorporate city or village. The lien is upon the interest which the owner has in the structure and land at the time the work is commenced, and also upon any subsequently acquired interest. The aggregate of all such liens shall not exceed the amount due or to become due from the owner. Where the materials and labor are furnished for a structure erected on the lands of a married woman in pursuance of a contract with her husband, but with her knowledge and consent, the lien attaches just the same.

10. **Notice to be Given.** Every person who wishes to avail himself of the provisions of the act, must make and file in the office of Register of Deeds for the county in which the land upon which the structure being erected or repaired is situated, a

just and true statement of the demand due to him over and above all legal set-offs; stating the time when the material was furnished or labor performed, and when completed and for whom, and containing a correct description of the property to be charged with the lien, and the name of the owner, part owner, lessee or otherwise if known, which statement must be verified by affidavit. ✓

This statement if made by the principal contractor must be filed within ninety days, and if by a sub-contractor, material man, or laborer, within thirty days from the date on which the last material was furnished or the last of the labor was performed. ✓

This statement may be in the following form:

FORM OF STATEMENT.

STATE OF..... }
COUNTY OF..... } ss.

A. B. of....., being duly sworn, says, that on the day of, 18..., he furnished certain labor (or material) in and for building (or altering, improving, repairing, erecting or ornamenting) a certain situated on the following described land,, in pursuance of a certain contract with C. D. the owner, (or the contractor or a sub-contractor or other person, as the case may be), and that the last of such labor was performed (or material was furnished) on the day of, 18..., and that there is justly and truly due deponent therefor from the said C. D. over and above all legal set-off the sum of dollars, for which amount deponent claims a lien on said land (or building) of which is the owner (or part owner, etc., as the case may be).

A.... B....

Subscribed and sworn to before me, this day of 18..

A failure to file such statement within the time will not defeat the lien except as against purchasers or incumbrances in good faith without notice whose rights accrue after the ninety or thirty days, as the case may be, and before the claim of lien was filed. ✓

To preserve the lien against the owner and prevent payment by him to the principal contractor, the sub-contractor or laborer must within thirty days serve upon such owner, a written notice

of the filing of such claim. Such notice may be served by an officer or by the party himself. Every person claiming such lien shall, if required by the owner, within three days after demand therefor, furnish to him a written statement of the amount of work or material furnished to the date of the statement and not paid for, as nearly as he can ascertain, and every owner when requested by any sub-contractor or laborer, must within three days produce the contract between himself and the contractor or sub-contractor, and allow such laborer or sub-contractor to make a copy thereof, and also furnish any claimant of a lien a written statement of the amount due and unpaid on such contract. A failure to comply with this provision is punished by a penalty of one hundred dollars and all actual damages occasioned by his refusal.

11. Priority of Liens. The liens provided for in the act take priority as follows: 1st. All liens for work, labor or materials furnished, shall be deemed simultaneous mortgages. They shall take priority of all garnishments for the contract debt, whether made before or after the commencement of the work or the furnishing of materials. They shall be preferred to all other liens or incumbrances which may be put upon the building or structure, or the land upon which the same are situated, made subsequent to the commencement of said building or other structure.

They shall take priority over any other title, claim, lien or incumbrance or mortgage to or upon the land except any mortgage which secures money advanced for the building of the structure of which said lien is claimed.

12. Enforcement of Liens. The only remedy or use of the common law lien is to allow the creditor to retain possession of the goods. He cannot enforce or foreclose such a lien by selling the goods and retaining from the proceeds of such sale the amount of his claim, excepting by virtue of some statute.

There will be found in most of the States statutes governing the foreclosure of common law liens, and these must be looked to for guidance in all such cases.

The statutory liens are enforced by a method somewhat similar to that by which a mortgage is foreclosed.

In Michigan such liens continue for sixty days after the affidavit of amount due is filed. They then cease unless proceedings

are begun to enforce them. These proceedings consist of a bill or petition in chancery. Persons claiming liens are complainants, and all persons having rights in the property affected, and all persons holding other like liens are made defendants.

The enforcement of a lien is a matter which should not be undertaken except by an attorney, and the details of the method to be pursued are therefore not necessary to be given in a popular treatise.

13. Other Statutory Liens. Aside from the common law liens and statutory mechanic's liens heretofore described, there are other liens given by statute for the benefit of mechanics and laborers. For instance, these will be found in most of the States statutes which supersede or reinforce the common law liens already referred to.

The following provision from the Michigan statutes (see Howell's Mich. Statutes, Sec. 8399) is given as a sample of this kind:

"Whenever any person shall deliver to any mechanic, artisan or tradesman, any materials or articles for the purpose of constructing in whole or in part, or completing any furniture, jewelry, implements, utensils, clothing, or other article of value, or shall deliver to any person any horse, mule, neat cattle, sheep or swine, to be kept or cared for, such mechanic, artisan, tradesman, or other person shall have a lien thereon for the just value of the labor and skill applied thereto by him, and for any materials which he may have furnished in the construction or completion thereof, and for the keeping and care of such animals, and may retain possession of the same until such charges are paid."

Another somewhat similar provision of the Michigan statutes (see Howell's Mich. Statutes, Sec. 8400) is as follows:

"When any person shall deliver to any mechanic, artisan or tradesman, any watch, clock, article of furniture or jewelry, implements, clothing, or other article of value to be altered, fitted or repaired, such mechanic, artisan or tradesman shall have a lien thereon for the just value of the labor and skill applied thereto by him, and may retain possession of the same until such charges are paid."

In these cases, if the owner of the property shall not, when the article shall have been constructed or repaired, or the time

for the keeping of the stock shall have expired, pay to the mechanic, artisan or person, to whom the charges are due, the amount thereof, such person may enforce the lien as above indicated.

The liens upon personal property are enforced by a suit for the recovery of the charges which they secure. The judgement obtained is satisfied out of the property covered by the lien and the remainder, if any, is turned over to its owner, but as this procedure should be intrusted to an attorney, it is unnecessary to describe it in detail.

There are still other liens given by the statutes of the various States for labor on logs, timber, posts, and other things of the sort, but as these are of not universal application their consideration is here omitted.

14. General Principles. The courts, in passing upon the statutory liens, have laid down some general principles which it may be well to refer to.

All statutory liens must be strictly pursued to acquire rights under them. It must appear that every essential requisite in the proceedings was regularly taken. (38 Mich., 592).

In order to create a lien there must be a contract with a person owning an interest in the premises upon which it is claimed, and the contract must be adhered to, and be performed upon the lands against which the liens is sought to be enforced. (49 Mich., 12).

A lien cannot arise under the Michigan statute in favor of parties merely for sale of machinery or materials which may or may not go into a building, according as the purchaser may determine. (37 Mich., 313).

15. A Precaution. Before leaving this subject the reader's attention is again called to the fact that in order for the mechanic or laborer to secure the benefits of the statutory liens, the conditions provided by the statute must be strictly observed. If the laborer allows the matter to go until he finds he cannot get his pay, he will probably also find that he has lost the opportunity of getting a lien.

The local statute must be looked to, and the requirements that it contains as to the filing and serving of a preliminary notice must be strictly followed.

CHAPTER III.

THE LAW OF GARNISHMENT.

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| 1. Its Importance. | 7. Garnishee Cannot be Sued. |
| 2. Subject Explained. | 8. Demands Not Due. |
| 3. Regulated by Statute. | 9. Corporations as Garnishees. |
| 4. When it May be Used. | 10. Garnishment in Attachment. |
| 5. Liability of Garnishee. | 11. Who May Not be Garnishees. |
| 6. Final Proceedings. | |

1. Important to Laborers. It not infrequently happens that a workman or mechanic finds when pay-day comes that his wages have been "garnisheed," as it is popularly expressed, and a great deal of trouble, confusion and worryment is thus occasioned, not only to employe, but to employer. It has been suggested to the compiler that he cannot touch upon a matter more practical to the laboring and employing classes, than this subject of garnishment.

2. Subject Explained. Garnishment is a warning to a person to appear before a Court and give information regarding a cause there pending. It is a writ served upon a person supposed to be indebted to the defendant in the suit, commanding him to appear and disclose the amount of his indebtedness, and to hold the same subject to the order of the Court for the benefit of the plaintiff.

3. Regulated by Statute. The whole subject is regulated by statute in the several States, and it is only by careful study of the local statutes that complete knowledge can be gained. All that can be here given is a general outline of the provisions of the Michigan statute, which is based upon that of New York, and is sufficiently similar to that of other States to afford a tolerably practical view of the matter.

4. When Garnishment may be Used. When any action founded upon contract is commenced, or after a judgment

has been rendered in any case, if the plaintiff has reason to believe that any person has money, property or effects in his possession belonging to the defendant or is otherwise indebted to the defendant, he may make and file with the Court an affidavit setting forth such belief, and the Court will then issue a summons requiring him to appear and disclose the amount of his indebtedness.

5. Liability of Garnishee. The person so summoned is called the garnishee, and from the time the summons is served upon him he is deemed liable to the plaintiff to the amount of his indebtedness to the defendant, and he must not then pay anything over to the defendant, for if he does he will still be liable to the plaintiff to the amount of such indebtedness; except that if the defendant is a householder, having a family, and the garnishee owes him for personal labor, any indebtedness up to twenty-five dollars is exempt, and is not in any way affected by the proceeding. If the garnishee neglects or refuses to appear, he may be brought before the Court by warrant.

The disclosures made by the garnishee are binding upon the plaintiff. He stands in the attitude of a witness for the plaintiff and his testimony is the basis of all subsequent proceedings (33 Mich. 65.) If from his answers it appears that he has no property of the defendant in his possession and is not indebted to him, all proceedings against him are at an end. His answers must be taken as true. He cannot be impeached. (7 Mich., 103).

6. Final Proceedings. If the plaintiff recovers judgment against the defendant, the garnishee may, if he is indebted to the defendant, pay to the Court, unless an appeal is taken or a stay of execution put in, the amount of his indebtedness or sufficient to satisfy the judgment (except such as is exempt to householders) and thereupon the Court will execute and deliver to the garnishee a release and discharge for the amount paid, which will be binding upon the defendant.

If the garnishee does not do this, the plaintiff may proceed against him, and like proceedings may be had as upon a suit brought against the debtor.

A judgment against a garnishee is the same as any other judgment. Execution may issue thereon, and may be stayed in the same manner as in other cases.

If the plaintiff fails to recover judgment against the defendant, the effect is to discontinue all proceedings against the garnishee.

7. Garnishee Cannot be Sued. No suit can be brought by the defendant against the garnishee for the recovery of the admitted indebtedness while the proceedings are pending. If such a suit is brought it is a perfect defence to show the proceedings in garnishment.

8. Demands Not Due. If the garnishee shall disclose an indebtedness owing and payable at some future time, the Court will, if judgment is recovered by the plaintiff, continue the cause until after the time that such indebtedness is payable, and such proceeding can then be had as if the money had been due at the time of the service of the summons.

9. Corporations as Garnishees. All corporations other than municipal may be proceeded against as garnishees in the same manner and with like effect, as individuals. The summons may be served upon the president, cashier, secretary, treasurer, agent, superintendent or other principal officer. Such officer is required to disclose the same as in other cases, or if the office of the corporation is in a township other than that in which the Court is located, the disclosure may be made in writing under the oath of such officer.

10. Garnishment in Attachment. This is a proceeding for reaching the property of the defendant in the hands of a third person when service cannot be secured upon the defendant.

The proceeding is somewhat complicated and does not have direct connection with the law regarding labor.

11. Who May Not be Garnishees. No public officer having money in his hands subject to a demand may be garnisheed in a suit against one to whom the same is due. (7 Mass., 259).

No person holding authority from the law and obliged to execute it according to the rules of law can be made a garnishee. (8 Mass., 246).

Thus a county treasurer, or a sheriff, or constable, or any other such officer having money in his hands for the payment of a demand by an individual cannot be proceeded against as garnishee; the money in all these cases is in the custody of the law and is not liable to be arrested in the hands of the public officer.

It is really not the money of the defendant until paid over to him. (34 Mich., 99; 33 Ills., 510). But where an officer, seized under an execution a greater sum than the execution required, the surplus was held to be the money of the defendant and the officer was made liable as garnishee for the amount of it. (11 Barb., 345). So likewise guardians, executors, administrators and the like whose duties are prescribed and regulated by law, cannot be made liable as garnishees; at least not until there has been a settlement by decree of the Court and a definite sum found due the defendant. (9 Vermont, 320).

An attorney having money in his hands collected by him for the defendant, may be made liable as garnishee. (12 Mass., 441).

CHAPTER IV.

LAW AS TO STRIKES, BOYCOTTS, ETC.

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| 1. An Important Civil Right. | 6. Conspiracy to Prevent Employment. |
| 2. Limitation of this Right. | 7. Statutes Upon the Subject. |
| 3. Free Will Must Not be Interfered With. | 8. Boycotts and Lockouts. |
| 4. How Far Strikers May Go. | 9. Contracts Not to Engage in Labor. |
| 5. How Persuasion May be Used. | |

1. An Important Civil Right. Among the civil rights guaranteed to every American citizen, is the right to make use of his labor in any lawful employment. He has the undoubted right to hire out in the service of others as well as to refrain from doing so if he shall see fit. Judge Cooley pronounces this one of the first and highest of an American's civil rights. (Cooley on Torts, page 276).

2. Limitation of this Right. Perhaps the only limitation that can lawfully be placed upon this liberty, is the right of the State to determine what shall be lawful employments. It is left with the State Legislatures to determine, in their wisdom, what employments are harmful and demoralizing to the public; and these they have the power to forbid. For example: Games of chance, are forbidden and in many States, traffic in intoxicating liquors; and there is no question of the rightful authority of the State in such matters. Not only may some occupations be prohibited as unlawful, but all may be regulated as to the manner in which and by whom they may be conducted, in cases where consideration of morals or public health are involved.

While the general principle is that no person shall be excluded from any lawful employment, still the law may make exceptions in the case of children or of females where the employment would be hurtful to themselves or to others.

The employment of small children in mines and manufactories is often prohibited, and the right to do so is unquestioned. (120 Mass., 383).

In fact any reasonable regulation may be placed upon any employment, and the test of what is reasonable must be found in the judgment of the Legislature, unless the Constitution has provisions on the subject. Whatever the Legislature ordains and the Constitution does not prohibit is lawful. (73 Penn. State, 29; 65 Missouri, 325.)

It follows from the foregoing that every citizen, unless prohibited by some positive law, may engage in whatever occupation he may choose and may hire others to engage in it with him, subject to the regulations above referred to. He may hire out to whoever he wishes and may contract to work as long or as short a time as may be agreed upon. If he works by the day, he may stop at the close of any day and recover his pay for the work done. He may induce as many of his fellow workmen to stop at any given time as he can, and in doing so he may use any means which does not interfere with the free exercise of his fellow workman's will.

3. Free Will Must Not be Interfered With. It is one of the foundation principles of our civilization that no man shall be deprived of his life, liberty or property, except by due process of law. A man's labor is a part of his property and his right to labor a part of his liberty. The right of every person in America to exercise his free will in any lawful way cannot be interfered with, without serious liability. Argument, persuasion, peaceful inducement of any kind may be lawfully used; but force, fraud or intimidation cannot.

4. How Far Strikers May Go. It is very important to know just how far strikers may proceed in order to carry out their wishes; for when a strike is resolved upon it is often imperative to its success that every laborer at a given place or institution join in it or remain out of a given employment for a given time. To accomplish this, any agency which does not interfere with individual free will may be used. The line is drawn there. Strikers may band together, may promise each other mutual aid, may induce others to join them by any representations which are not fraudulent, and they may do this, even though the effect be to ruin the property of their employers; but

the moment that force is used, an assault is committed and an actionable wrong done. Every laborer has unquestioned right to repel force by force, and he may defend his personal liberty even to the extent of taking life.

Any employer who should attempt to prevent his employes from exercising their free will to the extent of their legal rights by any means involving fraud, intimidation or force, would be equally culpable, and would be in the same manner liable to action, and any force used by him might in like manner be repelled by force.

5. How Persuasion May be Used. Peaceable persuasion which does not involve fraudulent misrepresentation, can be used to any extent. An ignorant or simple-minded workman might within these limits be prevented in a sense from exercising his free will, and for this there would be no liability; but while persuasion may thus be used to any extent, care must be taken to see that it does not involve false or fraudulent misrepresentation. If strikers tell willful falsehoods respecting employers, as for instance, that they are pecuniarily irresponsible when such is not the case, they will become liable to action for slander.

6. Conspiracy to Prevent Employment. What may be legally done by the individual, may not always be legally done by a combination of individuals. A conspiracy contemplates the combination of persons to accomplish some unlawful purpose to the injury of others. If the purpose designed is not unlawful, any combination may be formed, and there will be no liability, so long as the end in view and the means used are not unlawful; but if the end in view is unlawful, the conspiracy becomes so as soon as any step is taken towards its accomplishment. The steps in themselves may not involve wrong, but if they are in pursuance of an illegal object, they then become, unlike those of the individual, an actionable offense, and may even be prevented by public authority.

An individual may by himself plan and plot to his heart's content, and he cannot be interfered with until he does some act which is illegal; but a combination of individuals unlawfully plotting, constitutes a conspiracy which is of itself unlawful and may be prevented or punished.

7. Statutes upon the Subject. Upon this question of conspiracy the legislatures of the various States have enacted laws,

some of which have gone to the limit, if not beyond the point, of validity. The following provisions from the statutes of Michigan (see Howell's Mich. Statutes, Sec. 9273-76), are here given as a sample of State legislation respecting this general subject.

The validity of the Michigan statute has not been questioned, though the act has been severely criticised by many persons interested in the advancement of labor.

*** If any person or persons shall willfully and maliciously by any act, or by means of intimidation impede or obstruct, except by due process of law, the regular operation and conduct of the business of any railroad company or other corporation, firm or individual in this State, or of the regular running of any locomotive engine, freight or passenger train of any such company, or the labor and business of any such corporation, firm or individual, he or they shall, on conviction thereof, be punished by imprisonment in the county jail not more than three months, or in the State prison for a period not exceeding one year.**

"SEC. 2. If two or more persons shall willfully and maliciously combine, or conspire together, to obstruct or impede by any act or by means of intimidation, the regular operation and conduct of the business of any railroad company or any other corporation, firm or individual in this State, or to impede, hinder or obstruct, except by due process of law, the regular running of any locomotive engine, freight or passenger train, on any railroad, or the labor and business of any such corporation, firm or individual, such persons shall, on conviction thereof, be punished by imprisonment in the county jail, for a period not more than three months, or in the State prison for a period not exceeding two years.

"SEC. 3. This act shall not be construed to apply to cases of persons voluntarily quitting the employment of any railroad company or such other corporation, firm, or individual, whether by concert of action or otherwise."

"If any person or persons shall by threats, intimidations, or otherwise, and without authority of law, interfere with, or in any way molest, or attempt to interfere with, or in any way molest or disturb, without such authority, any mechanic or other laborer, in the quiet and peaceable pursuit of his lawful avocation, such person or persons shall be deemed guilty of a misdemeanor, and on conviction by a court of competent jurisdiction, shall be severally punished by a fine of not less than ten dollars, nor more than one hundred dollars, or by imprisonment in the county jail where the offense shall have been committed, not less than one month nor more than one year, or by both fine and imprisonment, in the discretion of the Court; but if such punishment be by fine, the offender shall be imprisoned in such jail until the same be paid, not exceeding ninety days."

8. Boycotts and Lockouts. What has been said regarding strikes is equally applicable to boycotts and lockouts. Any means may be used to prevent persons from trading at a certain place, or from using goods of a certain make, or from accepting

employment from certain employers, which do not involve force, fraud or intimidation. It is possible that a certain sort of fraud may be used without liability. For instance if the leader of a strike shall say, to his followers: "This strike is certainly going to succeed," when he knows that it is not, it is a fraud upon his followers, but he would not be liable to the employers for the injury resulting. He may practice fraud upon his followers without being liable to employers unless that fraud includes false statements about employers. Great care should be taken not to allow a boycott to run into a system of blackmail. If an unlawful threat is held out or an unlawful fine imposed, it will amount to blackmail or something worse, and will result in harm to the cause it was designed to help.

9. **Contracts Not to Engage in Labor.** A contract not to engage in trade or labor is against public policy and is not binding upon the one who makes it. Persons who in joining societies agree to refrain from labor when ordered by the officers of such societies, are not legally bound by such agreements, and if they do not choose to obey they are not under any legal liability to any one. So likewise an agreement on the part of employers not to hire labor generally will be equally void. The decisions on this line of subjects are not numerous nor well in point, and the law may be said to be somewhat unsettled.

CHAPTER V.

ARBITRATION IN LABOR TROUBLES.

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| 1. A Desirable Remedy. | 4. Statutory Boards. |
| 2. The Law of Arbitration. | 5. Standing Tribunals. |
| 3. Compulsory Arbitration. | 6. Special Tribunals. |

1. A Desirable Remedy. The relation of employer and employe should be one of friendly confidence. The real interests of the two are mutual, if not identical, and the remedy for any failure of agreement between them should be one which will not tend to break up friendly relations. The attempted remedy by strikes, boycotts, and the like is one which often brings disaster to both sides. Such methods of readjustment breed distrust and tend to promote class feeling. A remedy which will strengthen mutual confidence, and which will not disturb business while the controversy is pending is therefore greatly to be desired. Arbitration seems to be the only method which can accomplish this. It goes upon the true assumption that interests are mutual, and that the difficulty grows out of failure to agree upon minor points. It enables disinterested parties, whose judgments are not warped, whose minds are unbiased, and who may, without prejudice, study all sides of the problem and determine with clearness as to what is fairness can be done, to adjust the differences without interrupting business, engendering hatred, or precipitating conflict which may end in want, riot or bloodshed. Arbitration should unquestionably be encouraged.

2. The Law of Arbitration. Arbitration, as a friendly method of settling controversies between individuals, has been long known to the law, and it has always been the policy of the law to encourage it. The statutes of the several States regulate the procedure with considerable minuteness. Whenever a controversy arises between individuals they may refer it to arbi-

trators for adjustment, and the award of such arbitrators, when made in accordance with the statute, has all the binding force and effect of the judgment of a court. In fact the award may be entered in the records of the court and enforced by execution, the same as a judgment.

But these statutory provisions respecting arbitration are not adapted to the adjustment of differences between capital and labor. Such differences arise most often from failure to agree, not from broken agreements, and the methods now known to the law will not work. There are therefore in America at present practically no enactments respecting arbitration as a means of settling labor troubles. A bill has been introduced in Congress bearing upon the subject, and some of the State Legislatures will no doubt consider the matter. In view of this fact it may be well for parties interested to inform themselves as to what has been done in other countries and as to what ought to be done in this. In a recent lecture by Judge T. M. Cooley of Ann Arbor, on the subject of arbitration, many valuable points were suggested.

3. Compulsory Arbitration. Upon this point the learned Judge said: 1. The law may make it compulsory and create a statutory board for it. This is found unavoidable in England. The speaker did not believe such boards could be of much value here. They could not be given compulsory powers, except when a violation of legal rights was involved. They could not fix the terms of future employment or wages, for that would be making contracts for parties. A law to compel arbitration would be a species of slavery.

4. Statutory Boards. 2. A statutory board to which, by consent, the parties might appeal without compulsion might be of some use, but not much.

5. Standing Tribunals. 3. Standing tribunals might be established in any particular trade or business by a co-operation of employers and men, submission to whose mandates would be simply implying honorary obligations on both parties. This is found very valuable in England, where it is composed of equal numbers of employers and men. It is always understood that an endeavor is to be made by these to settle the controversy without calling in outside parties, but if impracticable, an umpire is agreed upon. It very seldom happens in England that either

side refuses to abide by the decision. Lockouts and strikes are thus avoided. This would be particularly valuable in America, especially in railroads. Each company, with their own men, could establish such a board. Such action would build up a feeling of common interest and union; would make the company more regardful of the interests of the men, and *vice versa*. No difficulty is in the way of this except the unwillingness of the parties.

6. Special Tribunals. 4. A special tribunal to settle a particular controversy is often serviceable. Arbitration ought to come into general use. Every successful instance of its use has a valuable educating influence to prevent hostile resorts, but can have no application to a case where outside parties, for reasons of their own, undertake to compel employers to discharge all or any of their men.

CHAPTER VI.

LAWS FAVORING THE ORGANIZATION OF LABOR.

The rapid growth of labor organizations during the past few years, and the evident good design of the movement, have led to the enactment of statutes providing for thorough organization and incorporation of such societies, in certain cases. In Michigan, for instance, there is a law for the incorporation of Knights of Labor Assemblies, and another for the incorporation of all other societies whose object is to promote the interests of trade and labor.

I. Charters for Knights of Labor. The statute (Laws Mich., '83, p. 171) provides, as follows:

SEC. 1. Any local assembly of the order of the Knights of Labor of North America, duly organized within this State under and pursuant to the provisions of the Constitution and laws of the general assembly of the Knights of Labor of North America, may become a body corporate and politic in the manner following, viz:

First—At a regular meeting of such local assembly a resolution shall be put to a vote of the members thereof present, expressing the desire and determination, of such local assembly to be incorporated, and directing the officers thereof to perfect such incorporation, and if such resolution be adopted by a two-thirds vote of all members in good standing, it shall be declared adopted, otherwise lost.

Second—On such resolution being passed, the master workman and recording secretary of the assembly shall prepare articles of association under their hands and the seal of the assembly, setting forth the number of persons then in good standing in the assembly desiring incorporation, the name by which the assembly is known and its number, the date of its organization, a copy of the resolution mentioned in the first subdivision of this section, the corporate name by which the assembly shall be known in the law, the general object and purpose of the association, which shall in no way conflict or be inconsistent with the object and purpose of the gen-

eral assembly of the order of Knights of Labor of North America, as stated in its constitution, nor in conflict or inconsistent with any law of the United States or of this State, and the period for which it is incorporated, not exceeding thirty years.

Third—A copy of such articles of association shall be filed with the clerk of the county in which such corporation shall be formed and, together with the affidavit hereinafter named, shall be recorded by the county clerk in a book to be kept by him for that purpose.

Fourth—The master workman and recording secretary executing such articles of associations shall make and annex thereto, before filing, an affidavit stating that they are respectively members of and occupy the official positions above named in said local assembly, that the resolution, a copy of which is set out in the articles of association, was duly adopted at a regular meeting of the assembly, and by a two-thirds vote of all members in good standing, and that all the statements in said articles of association are true to the best of their and each of their knowledge and belief, and that said local assembly is organized and acting under the constitution of the general assembly of the Knights of Labor of North America.

SEC. 2. When the foregoing requirements are complied with, the local assembly shall be a body corporate and politic by the name expressed in such articles of association and by that name shall be a person in law, capable of suing and being sued, and a copy of said articles of association and affidavit duly certified by the clerk in whose custody the same may be, under the seal of the proper county, shall be *prima facie* evidence in all the courts of this State of the existence and incorporation of said local assembly.

SEC. 3. A copy of such articles of association, with an affidavit attached, as provided in section one of this act, duly certified by the county clerk of the proper county, may be filed with the Secretary of State, copies of which duly certified, shall in all the courts of this State be *prima facie* evidence of the existence and incorporation of said local assembly.

SEC. 4. Any district assembly of the order of Knights of Labor of North America, organized and acting under and pursuant to the constitution and laws of the general assembly of the order, may become incorporated by adopting a like resolution as provided in section one of this act, executing articles of association under the hands of its district master workman and district recording secretary and the seal of the district assembly, containing like statements as those required in articles of association for the incorporation of local assemblies, with a like affidavit annexed made by the above named officers, and filing the same with the clerk of the county where such district assembly is incorporated, which articles of association and affidavit shall be recorded by the County Clerk. A copy thereof duly certified by the clerk of such county shall have the same force and effect as evidence, as is provided in section two of this act. A certified copy of such articles may be filed with the Secretary of State, in the same manner and shall have the same force and effect as evidence as is provided for in said section.

SEC. 5. Every corporation formed pursuant to the provisions of this act, may take and hold personal and real property, so far as the same may be

necessary or convenient for the purposes of the organization, not exceeding fifty thousand dollars in amount, and may convey, incumber and deal with the same as it may from time to time determine by a majority vote of all members in good standing, *Provided*, That no property held and owned by such corporation shall be sold or incumbered except at a regular or special meeting of the assembly, five days written notice of which shall have been given to every member in good standing, and at the time being within the jurisdiction, which notice shall briefly state the disposition intended to be made of such property, describing it, and shall be signed by the district recording secretary or recording secretary, as the case may be, and with the seal of the assembly attached.

SEC. 6. The management, direction and control of the property and business of such corporations shall be vested in such of its officers and members as a majority of its members present, and acting thereon, at any regular meeting of the assembly, shall from time to time determine.

2. Societies to Promote Interests of Labor. The other statute referred to provides that any number of persons, not less than five, may associate themselves together and become a body corporate for the improvement of their moral, social and material interests, the regulation of their wages, the laws and conditions of their employment, the protection of their joint and individual rights in the prosecution of their trades or industrial avocations, the collection and payment of funds for the benefit of sick, disabled or unemployed members, etc., etc. (Laws Mich., '85, 163.)

CHAPTER VII.

SPECIAL LAWS FOR THE PROMOTION AND REGULATION OF LABOR.

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| 1. Labor Bureaus, etc. | 4. Statutory Safeguards. |
| 2. Prevention of Emigration. | 5. A Legal Day's Work. |
| 3. Federal Restriction. | |

There will be found in the statutes of the States generally, various provisions for the regulation of labor and the promotion of industrial interests. Some of these are the result of recent labor agitations and are interesting as showing the direction and scope of legislation so secured. Among them are the laws establishing bureaus of labor statistics, laws restricting emigration, and regulating the time of labor, and provisions for the safety and comfort of operatives.

I. Labor Bureaus. For the purpose of securing information as to the industrial condition of the country and the needs of the laboring classes, there are in some States labor bureaus operating as a part of the State government. In Michigan the institution is called the Bureau of Labor and Industrial Statistics, and its chief is styled the Commissioner of Labor.

Its duties are to collect, assort, systematise and present in the form of annual reports, statistical details relating to all departments of labor in the State. It is directed to inquire particularly concerning the hours of labor, the number of laborers and mechanics employed, the number of apprentices in each trade, the nativity of mechanics and laborers, the wages earned, the savings kept, the mental and moral culture with age and sex of laborers, the number and kinds of accidents occurring, the sanitary conditions of institutions where labor is employed, the use

of intoxicating liquors and their influence upon the health and mental condition of the laborer, the proportion of married laborers and mechanics who live in rented houses, with the average annual rental of the same, the value of property owned by laborers and mechanics, etc., etc.

Also information regarding the subjects of co-operation, trades unions and other labor organizations, strikes and other labor difficulties and their effects upon labor and capital.

The Michigan Bureau has been in operation a little over two years, and its reports have contained much valuable information.

2. Prevention of Emigration. Hitherto it has been the policy of the States to encourage emigration in every possible way. Commissions of emigration have been established with powers to take extreme means to secure the incoming of foreigners of all classes; and even the importation of laborers under contract, to be placed in direct competition with our home labor, has not been discouraged.

The effect has been to overstock the labor market in many lines to an extent sufficient to reduce the value of labor to a level common with that of foreign and over populated countries. Since the organization of societies for the investigation of labor problems, a decided reaction has set in, and among the first fruits of this reaction is the law of Congress recently enacted prohibiting the importation and migration of foreigners and aliens under contract to perform labor in the United States.

3. Federal Restriction. The effect of the law of Congress is to make it unlawful for any person, partnership or corporation to prepay the transportation or in any manner to encourage the importation or migration of any foreigner into the United States under agreement or understanding, that he shall here perform labor of any kind.

All contracts made between any person, company or corporation, and any foreigner, to come here for the purposes above indicated are utterly void.

Every violation of the above provisions is punished by a fine of one thousand dollars. Every master of a vessel who shall knowingly bring to the United States any foreign laborer, mechanic or artisan, who has previously entered into a contract to come here and perform labor, is deemed guilty of a misdemeanor, and on conviction, is punished by a fine not exceeding

five hundred dollars. Every foreign laborer, mechanic or artisan who comes here as aforesaid, may be imprisoned for a term not exceeding six months.

The act is not intended to prevent the free emigration of foreigners to this country, nor the hiring of such foreigners after they have voluntarily come here, nor is it intended to prohibit any individual from assisting any member of his family or any relative or personal friend to migrate from any foreign country for the purpose of settlement in the United States.

The spirit of the act is simply to prevent contracting with foreign, cheap labor to be brought into competition with our own workmen.

The act was approved by President Arthur, February 26, 1885.

Besides this act there were others passed, one regulating and practically prohibiting the emigration of Chinese to this country.

4. Statutory Safeguards. Among the statutory regulations for the betterment of the laboring classes, may be mentioned those relating specially to the employment of women and children. For instance, many States prohibit the employment of any child under the age of fourteen years, unless such child shall attend some public or private school at least four months during the year. A provision similar to this is in force in Michigan, (Laws, 1885, p. 37.) and is no doubt violated in a great many cases.

Another statutory provision is that preventing the employment of any person under the age of eighteen years, or of any woman of any age in any factory or shop of any kind, for a longer period than an average of ten hours a day with at least one hour allowed for dinner.

An equally important regulation is the one requiring that seats should be provided for the use of females who are employed in factories, stores and shops. The Michigan statute upon these points requires the chief of police in cities, and the supervisors in townships to see that the laws are enforced.

A provision even more important than the foregoing, is that requiring ample fire escapes to be placed upon all buildings, factories, mills, warehouses or workshops where operatives are employed.

The enumeration of these statutory safeguards might be further continued, but the above are sufficient to indicate their general scope and character.

5. A Legal Day's Work. The length of a day's work is, as has been stated, usually regulated by custom. Persons hiring out to work in any trade are presumed to engage with reference to the custom of the trade, and unless they make a special contract to the contrary, they are bound by the custom. In many States, however, there are statutes providing that, in the absence of a special agreement on the point, ten hours shall constitute a day's work, in all shops, factories, mills, lumber camps, etc. Such is the law in Michigan. (Laws, 1885, p. 154). If employers require their employes to work more than ten hours, they must pay for all over-time at the regular *per diem* rate, unless a special agreement is made to the contrary. This law does not apply to farm laborers, nor to domestic servants.

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